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Issue Date: 12 February 2004

Case No.: 2002-SDW-4

In the Matter of:

BRENDA MUGLESTON,
Complainant

vs.

EG&G DEFENSE MATERIALS, INC.,
Respondent

APPEARANCES:

MICK HARRISON, ESQ.,
Kentucky Environmental Foundation
128 Main Street
P.O. Box 467
Berea, KY 40403
On Behalf of the Complainant

LOIS BAAR, ESQ.,
Janove Baar Associates, L.C.
9 Exchange Place, Suite 1112
Salt Lake City, UT 84111
On Behalf of the Respondent

BEFORE: RICHARD D. MILLS
Administrative Law Judge

RECOMMENDED DECISION AND ORDER

This case arises under Section 1450 of the Safe Drinking Water Act, 42 U.S.C. 300j-9(i); Section 110(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9610; Section 507(a) of the Federal Water Pollution Control

Act, 33 U.S.C. 1367; Section 7001(a) of the Solid Waste Disposal Act, 42 U.S.C. 6971; and Section 23 of the Toxic Substances Control Act, 15 U.S.C. 2622; and the implementing regulations thereunder at 29 C.F.R. Part 24.

This claim is brought by Brenda Mugleston, Complainant, against her employer, EG&G Defense Materials, Inc. (“EG&G”), Respondent. Ms. Mugleston alleges that EG&G has taken adverse employment actions against her in retaliation for her engagement in protected activities. This matter was referred to the Office of Administrative Law Judges for a formal hearing, which was held on April 14-23, 2003, in Salt Lake City, Utah. During this hearing, both parties were given the opportunity to offer testimony, documentary evidence, and oral arguments. The following exhibits were received into evidence¹:

- 1) Complainant’s Exhibits Nos. 1, 3, 18, 20, 25, 33a, 33b, 43a, 43b, 44, 46-49, 51-56;
- 2) Respondent’s Exhibits Nos. 1, 8, 12-14, 18-19, 23, 30-33, 37-39, 43, 45, 48, 53-54, 59, 65, 68-78, 81-82, 91, 103-07, 113-15, 119-26, 135-39.²

Upon conclusion of the hearing, the record remained opened for the submission of post-hearing briefs by Complainant and Respondent, the last of which was received on December 5, 2003. After giving full consideration to the entire record, evidence introduced, and arguments presented, the Court makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

ISSUES

The unresolved issues in this proceeding are:

- 1) Whether Complainant engaged in protected activity under the law; and
- 2) Whether Respondent took adverse employment action against Complainant due to this protected activity.

¹ The following abbreviations will be used in citations to the record: CX – Complainant’s Exhibit; RX – Respondent’s Exhibit; and TR – Transcript of the proceedings.

² CX-1, CX-48, and RX-32 were received into the record but not formally admitted during the hearing. The Court now admits those exhibits. The admission or lack thereof of these exhibits does not change the Court’s decision below.

SUMMARY OF THE EVIDENCE

A. Complainant's Employment Background

Complainant, Brenda Mugleston, is employed by EG&G at the Tooele Chemical Demilitarization Facility (TOCDF) in Tooele, Utah. TR. 34. TOCDF is a chemical weapons incineration complex that began processing chemical warfare agent on behalf of the United States Army in 1996 or 1997, pursuant to a treaty between the United States and various other countries to destroy their chemical munitions stockpiles. TR. 57-58, 1748.

Ms. Mugleston has been employed by EG&G for nine years, beginning with a position involving environmental compliance and EG&G's RCRA permit. TR. 34-35. Beginning in July 1994, Ms. Mugleston next worked in the facility's Personnel Maintenance Building (PMB) as an attendant in the laundry. TR. 35; CX-1. In January 1995, Ms. Mugleston began working as a Demilitarization Support Area (DSA) operator, a job that involved dressing workers in demilitarization protective ensemble (DPE) suits in preparation for entries into toxic areas. TR. 35-36, 94; CX-1. As a DSA operator, Ms. Mugleston also performed entries into toxic areas herself, as an emergency backup entrant. TR. 35-36. In November 1996, Ms. Mugleston began working as a Hazardous Waste Technician. TR. 35; CX-1. Ms. Mugleston then worked as a General Clerk in Document Control beginning in November 1997. TR. 35; CX-1. In June 1998, Ms. Mugleston began working in the Environmental Department as an Environmental Technician. TR. 35; CX-1.

Prior to May 1997, Ms. Mugleston was certified in the Army's Chemical Personnel Reliability Program (CPRP), which allows security clearance into otherwise restricted areas of TOCDF. TR. 253. In May 1997, Ms. Mugleston was involved in a work incident that led to her disqualification from the CPRP, causing her to become restricted from the secure chemical-related areas of TOCDF. TR. 249, 252-53, 437-39; CX-1. This work incident prompted Ms. Mugleston to file a Department of Labor complaint against EG&G, alleging retaliation due to her engagement in protected activity. TR. 65-66. The complaint was resolved through a settlement in September 1998, approved by the Department of Labor, in which Ms. Mugleston and EG&G agreed to proceed with their employment relationship based on a clean slate. TR. 66, 249.

Prior to the settlement of her complaint, Ms. Mugleston was reassigned by EG&G, due to the loss of her CPRP clearance, to work in its warehouse. TR. 324-25, 437-39. She worked in the warehouse until September 13, 1999, at which time Ms. Mugleston was laid off as part of a reduction-in-force. TR. 253-55, 443-44; CX-1.

Debbie Sweeting, the Human Resources (HR) Manager for EG&G at TOCDF,³ explained that the reduction-in-force was necessitated by EG&G's budget negotiations with the United States government. TR. 431, 443-44, 1208; CX-1.

At the time of Ms. Mugleston's lay off, EG&G provided Ms. Mugleston with a description of other positions that were available at EG&G for which she could apply. TR. 255-56, 444-45. Ms. Mugleston applied for the position of Brine Reduction Area (BRA) Residue Handling Area (RHA) Operator. TR. 1212. On October 8, 1999, Ms. Mugleston's CPRP clearance was reinstated, and she was re-hired as a regular full time BRA RHA Operator. TR. 257-58, 442-43; RX-33.

Ms. Mugleston has since worked as a BRA RHA operator. TR. 34. The normal duties of a BRA RHA operator include performing daily environmental inspections of the Heated Discharge Conveyor (HDC) bin, change outs of the HDC bin, performing inspections of the Cyclone area, unloading munitions and miscellaneous waste from the Metal Parts Furnace (MPF) Cool Down conveyor, pumping brine⁴ into tankers at the brine unload station, doing bulk storage tank readings, door guarding, and key holding. TR. 37, 637, 751-52.

B. Complainant's Safety and Environmental Concerns

Ms. Mugleston testified that TOCDF has had many safety and environmental discrepancies. TR. 57-58. In October 2001, Ms. Mugleston verbally raised safety and environmental concerns to Debbie Sweeting. TR. 1213. Debbie Sweeting thereafter arranged for Ms. Mugleston to meet on October 9, 2001, with Tim Olinger, the Assistant Plant Shift Manager at the time, and Jimmy Clark, the Deputy Manager at the time.⁵

³ Ms. Sweeting is the highest HR authority at TOCDF. TR. 1258-59. EG&G's highest overall HR authority is Bob Rudisin, the Vice-President of HR, who is based in Gaithersburg, Maryland. TR. 1258-59. Ms. Sweeting began her employment with EG&G in September 1998 as a consultant for HR. TR. 431. Ms. Sweeting testified that the HR office seeks to develop, implement, and ensure consistent application of policies and procedures, acts as a liaison between the corporate office, managers, and employees, and ensures compliance with personnel labor laws. TR. 1208.

⁴ Brine is liquid waste from processed munitions. TR. 752-53.

⁵ The structure of EG&G management was undergoing reorganization at the time of the hearing. TR. 59. Tim Olinger became the Plant Manager for EG&G about one month before the hearing, and Jimmy Clark currently is the Planning/Scheduling Manager. TR. 1744, 1837-38. Prior to becoming Plant Manager, Tim Olinger had been the Operations Manager since May 2001. TR. 1745. Mr. Olinger testified that the Plant Manager conducts the daily direction of the short-term and long-term goals for the plant, is responsible for overseeing the plant, and supervises the Operations Department, Maintenance Department, Laboratory, and Training Department. TR. 1745-46.

In terms of hierarchy, EG&G's management structure begins with the General Manager, then the Plant Manager, then the Operations Manager, then the Plant Shift Manager, then the Operations Supervisors, and then the area leads. TR. 59, 1838-39. Area leads are supervising individuals in different work areas, such as the BRA RHA, the Pollution Abatement System (PAS), Utilities, the Container Handling Building (CHB) Unpack, the DSA, Hazardous Waste Management, and Maintenance. TR. 60-61.

TR. 68-69, 149, 1217-18. Ms. Sweeting testified that Mr. Olinger informed her after the meeting that Ms. Mugleston raised no issues of imminent danger, but that Ms. Mugleston had some good ideas that were worth investigating. TR. 1218-19.

Ms. Mugleston was asked by Mr. Clark and Mr. Olinger to put her concerns in writing after the meeting so that they could investigate the issues she raised. TR. 69, 149, 1219. As a result, Ms. Mugleston formulated on October 11, 2001, a memorandum detailing the concerns she raised in the October 9, 2001 meeting. TR. 67, 149; RX-1. In her October 11, 2001 memorandum, Ms. Mugleston raised safety and environmental concerns regarding the number of workers in the MPF Cool Down area and respiratory issues in the MPF cool down area. TR. 67-68, 277-78; RX-1. Tim Olinger testified that he read Ms. Mugleston's October 11, 2001 memo and that her concerns were divided up and investigated by different people. TR. 1782-83, 1839. Debbie Sweeting testified that after receiving a copy of Ms. Mugleston's October 11, 2001 memo, she sent the memo to James Colburn, the General Manager at the time,⁶ and to Tom Kurkky, the Risk Manager, to inform them that there were concerns that had to be investigated. TR. 1270-71.

Ms. Mugleston submitted a second memorandum to EG&G management in February 2002, detailing further safety and environmental concerns. TR. 67. In her February 2002 memo, Ms. Mugleston raised safety and environmental issues involving the failure of emergency generators at the plant, contaminated tap gear, HDC waste and HDC bin change outs, SCBA backpacks, munitions unloading, ACAMS monitoring, chemical agent sampling in the airlocks, brine tank operations, constant changes to workplace procedures, the number of workers in the MPF cool down area, LSS air hoses, the failure to follow procedures during entries, inadequate responses to waste feed cutoffs, inadequate incident reporting, and inadequate waste and munitions tracking. TR. 74-75, RX-37.

According to Tim Olinger and Debbie Sweeting, Ms. Mugleston's February 2002 concerns were also investigated by EG&G. TR. 540, 1783-85. EG&G managers, including James Colburn, Tom Kurkky, Tim Olinger, Jimmy Clark, Steve Wallace, and Scott Vonhatten were well aware that Ms. Mugleston raised safety and environmental concerns in October 2001 and February 2002. TR. 542-43, 1642, 1718-19. Tim Olinger testified that the investigations into Ms. Mugleston's October 2001 and February 2002 concerns have been completed and that none of the issues raised in Ms. Mugleston's memos has been concealed from State of Utah regulators or the U.S. Army. TR. 1783-86. Mr. Olinger testified that several of the issues raised by Ms. Mugleston in February 2002 had been raised before by other employees and had already been

⁶ James Colburn was replaced as General Manager about two months prior to the hearing by Steve Frankowitz. TR. 1838.

investigated. Ms. Sweeting testified that Ms. Mugleston's memos have resulted in some changes to procedures and policies. TR. 540-42.

1. Complainant's Concerns: The Number of Workers in the MPF Cool Down Area

With respect to Ms. Mugleston's concern regarding the number of workers in the MPF cool down area, Ms. Mugleston indicated that the Standard Operating Procedures (SOPs) regulating the maximum number of personnel allowed in the MPF Cool Down area and the Brine Tank area permitted a limit of five personnel in each of those areas. TR. 278-81; RX-1. According to Ms. Mugleston, those SOPs were interpreted differently by each of the four shifts at EG&G.⁷ TR. 278-81; RX-1. Ms. Mugleston testified that some shifts interpreted the personnel limits as applying only to the number of people working in the area, while other shifts interpreted the personnel limits as applying to the total number of people located in the area, notwithstanding whether or not those individuals were working in the area. TR. 278-81; RX-1. This discrepancy caused some shifts to use as few as two workers for tasks in the MPF Cool Down area, a course of action Ms. Mugleston opined was unsafe. TR. 278-81; RX-1.

Ms. Mugleston testified that she had spoken to EG&G Safety Representatives Ryan Taylor⁸ and Bruce Anderson⁹ about this issue, but that the issue remained unresolved prior to her raising the concern in her October 2001 memo. TR. 279. Bruce Anderson acknowledged that Ms. Mugleston had approached him to suggest changes in procedures regarding the MPF cool down area. TR. 357-58, 371-72. Mr. Anderson testified that he, along with the Plant Manager at the time, investigated her concerns. TR. 372-73. According to Mr. Anderson, he reported back to Ms. Mugleston to a satisfactory degree about the concern. TR. 372-73.

Steve Wallace, Ms. Mugleston's former Plant Shift Manager,¹⁰ testified that Ms. Mugleston also raised with him the issue of the number of employees in the MPF cool down area. TR. 1642-43. Mr. Wallace testified that in response, he reviewed the SOP and personally visited the MPF cool down area to determine the number of people that

⁷ EG&G's work force is divided into four shifts, or teams, with each team working 14 12-hour shifts out of a 28 day cycle. TR. 1606-08.

⁸ Ryan Taylor has been a Safety Representative at EG&G for about 3½ years. TR. 1018.

⁹ Bruce Anderson has been a Safety Representative at EG&G for about 3 years. TR. 351.

¹⁰ Steve Wallace became a Project Specialist for EG&G about six weeks before the hearing. TR. 1604. He had worked as a Plant Shift Manager since 1997 or 1998. TR. 1605. As a Plant Shift Manager, he became assigned to Ms. Mugleston's shift, "A" Team, in about March of 2001. TR. 1605. Mr. Wallace testified that as Plant Shift Manager, he was responsible for the entire operation of TOCDF during his particular shift. TR. 1608-09.

could work there safely. TR. 1642-44. Mr. Wallace testified that he viewed a demonstration unloading of a bomb. TR. 1644. According to Mr. Wallace, the demonstration went well, and he reported this finding to EG&G's Safety Department. TR. 1644.

2. Complainant's Concerns: Respiratory Concerns in the MPF Cool Down Area

In her October 2001 memo, Ms. Mugleston also outlined respiratory concerns in relation to the MPF cool down area. TR. 67-68, 277-78, 1876; RX-1. Ms. Mugleston testified BRA RHA operators are involved in handling munitions and miscellaneous waste that have been processed in the metal parts furnace (MPF). TR. 53. The MPF thermally treats all munitions casings and miscellaneous waste. TR. 53, 722, 1402. Miscellaneous waste is waste from workplace items such as used filters, hoses, and contaminated tools. TR. 53, 722. On the exit side of the furnace, there is a cool down conveyor on which munitions exiting the MPF are allowed to cool before they are placed in designated containers for treatment or disposal. TR. 610, 1402. Once the burnt munitions have cooled to a certain point, they are cleaned, vacuumed, and then placed into a roll-off container. TR. 53, 1402.

Ms. Mugleston testified that BRA RHA operators do not have any respiratory protection while vacuuming and cleaning out the waste from the MPF. TR. 54-55. Ms. Mugleston testified that on many occasions she and other workers have inhaled ash from the miscellaneous waste, causing their noses to become filled with black debris for several hours and sometimes days. TR. 55, 72-73; RX-1. Ms. Mugleston testified also that she was concerned about fumes and vapors coming off of munitions after the munitions have been processed in the MPF. TR. 296; RX-1.

These concerns were corroborated by a number of other EG&G employees. Steve Land, a former BRA RHA operator,¹¹ testified that workers get black soot on their faces in the MPF cool down area. TR. 611. Pat Vario, a CHB Unpack operator,¹² testified that he works in the MPF cool down area and that the majority of workers in that area have respiratory concerns about the dust and ash in the area. TR. 648-49, 662-63. Jeff Utley, a BRA RHA operator¹³ and Ms. Mugleston's fiancé, testified that the ash from the miscellaneous waste breaks apart upon being handled, causing big clouds of particulates to rise up and contact one's skin and face. TR. 671, 722-23. Mr. Utley

¹¹ Steve Land has been a Pollution Abatement System (PAS) operator at EG&G for the past five months. TR. 591. Mr. Land has worked for EG&G for about ten years. TR. 592. Prior to the PAS, Mr. Land worked in the CHB Unpack, the BRA RHA, the DSA, the Control Room, and in Hazardous Waste. TR. 591.

¹² Pat Vario has worked at EG&G for almost six years. TR. 648-49. As a CHB Unpack operator, he unloads and processes munitions. TR. 648-49. Mr. Vario also worked formerly as a BRA RHA operator. TR. 649.

¹³ Jeff Utley has been employed by EG&G for six years and has always been a BRA RHA operator. TR. 671.

testified that he can feel himself inhaling these particles and that his nose afterward is plugged with the black particles, which are visible upon blowing his nose. TR. 723.

Ms. Mugleston testified that the waste coming out of the MPF has been found to have toxic metals, including lead and arsenic. TR. 54, 72-73. Ms. Mugleston testified that EG&G responded to her concern about ash and contaminants in the MPF cool down area by having Darren Hendrix, EG&G's Industrial Hygienist, perform testing and an inspection of the area. TR. 73-74. Ms. Mugleston testified that Mr. Hendrix took samples of the area, but not to her satisfaction. TR. 73-74. Ms. Mugleston also testified that she believed State inspectors visit the cool down area after the bins have cooled down, but not while the bins are hot out of the MPF, when vapors and fumes coming from the waste are visible. TR. 296. Ms. Mugleston testified that she requested that BRA RHA operators be given at least dust masks in this area. TR. 55. According to Ms. Mugleston, this request was denied by Darren Hendrix who indicated that approval for dust masks must be given by the workers' supervisor. TR. 55.

Tonya Elkington, the former Lead Environmental Compliance Representative for EG&G,¹⁴ testified that the residue and ash from the MPF cool down area is tested and has never come back positive for chemical warfare agent contamination or mercury. TR. 1402-03, 1484. Tim Olinger testified that Industrial Hygiene testing was performed in the MPF cool down area in response to Ms. Mugleston's concerns and that, to err on the side of caution, respirators are currently being used for some tasks in that area until the testing and analysis are completed. TR. 1876-77, 1879. Mr. Olinger testified also that additional protective equipment beyond what is required is available to an employee upon request. TR. 1793. Mr. Olinger testified that full-face respirators must be fit tested and so must be issued by a Respiratory Technician. TR. 1793. Dust masks may be issued by Respiratory Technicians or supervisors, as OSHA requires that respiratory protection be controlled, through fit-testing, training, and awareness of where the equipment is being used. TR. 1793-94.

3. Complainant's Concerns: Emergency Generators

In her February 2002 memo, Ms. Mugleston raised a concern about the failure of emergency generators at the plant. Ms. Mugleston testified that munitions are processed, drained, and incinerated in the Munitions Demilitarization Building (MDB). TR. 62. The MDB contains three levels of air quality. TR. 718-19. Category "C" areas contain clean air, without chemical warfare agent in either liquid or vapor form. TR. 718-19. In

¹⁴ Tonya Elkington has been employed by EG&G at the TOCDF facility for eleven years. TR. 1352. She has held several positions, including positions in the Environmental Department from October 1995 until February 2003. TR. 1353. Ms. Elkington worked in the Environmental Department first as a Shift Environmental Inspector, then as an Environmental Auditor, and then as the Lead Environmental Compliance Representative. TR. 1353. Since February 2003, she has been an Operations Specialist in the Operations Department. TR. 1353-54.

Category “B” areas, there is the possibility of agent in vapor form. TR. 719. In Category “A” areas, agent definitely exists in either vapor and/or liquid form. TR. 719. Workers in “A” and “B” areas must wear protective equipment while workers in “C” areas do not. TR. 719. The airflow in the MDB is controlled by the HVAC, an air system which maintains a negative air flow from inside out, so that clean air in “C” areas is not mixed with contaminated air from “A” or “B” areas. TR. 62-63, 626. When the HVAC system is off, the agent-contaminated air in the MDB is allowed to migrate to “C” category areas. TR. 718.

Ms. Mugleston testified that workers have been required many times to don their gas masks due to the loss of power in the HVAC and the failure of the backup emergency generators to start. TR. 63, 69, 293. Ms. Mugleston testified that she had noticed that the emergency generators did not start often times during inclement weather. TR. 69-70. In her February 2002 memo, she therefore suggested starting the emergency generators during bad weather and simply letting them run. TR. 69-70. She also suggested doing more of a start up, so that impurities would not build up within the diesel oil that fuels the emergency generators. TR. 70.

Steve Land, Jeff Utley, and Larry Allen, the Maintenance Supervisor for EG&G,¹⁵ also testified that problems have existed with the startup of the backup emergency generators. TR. 626-27, 717-18, 860-64. Tonya Elkington and Tim Olinger acknowledged that the HVAC has failed on some occasions in the past. TR. 1448, 1805-06. Tim Olinger testified that all the problems with the HVAC and emergency generators have been reported to TOCDF’s State regulators. TR. 1806, 1808. Ms. Elkington testified that the HVAC system has not gone off line for more than seven minutes and that no one has ever been injured due to power outage of the HVAC system. TR. 1372, 1515. Ms. Elkington testified that when the HVAC fails, buildings are evacuated and sealed off. TR. 1451. According to Ms. Elkington and Mr. Olinger, corrective actions have been taken, including the addition of a third backup generator and the implementation of a preventive maintenance plan, in which the emergency generators are tested every other week. TR. 1516, 1805-06. Ms. Mugleston, nevertheless, maintained that the emergency generators still have problems with starting up. TR. 78.

4. Complainant’s Concerns: Tap Gear

With respect to her concerns regarding contaminated tap gear, Ms. Mugleston testified that the majority of the tap gear problem has since been corrected, but that the issue was still being worked on. TR. 293-94. Ms. Mugleston testified that she has witnessed entrants exiting contaminated areas, hanging their tap gear up in non-

¹⁵ Larry Allen has been working for EG&G at TOCDF for 11 years. TR. 851-52. His work as Maintenance Supervisor involves working on the emergency generators that backup the HVAC system. TR. 860.

contaminated areas, and then putting the gear back on ten minutes later and re-entering the contaminated areas. TR. 293-95. Ms. Mugleston believed that there were managers who were aware of the problem and who continued to let it happen for purposes of increased production. TR. 294. However, Ms. Mugleston was not aware of any specific manager who knowingly allowed this to occur. TR. 294.

5. Complainant's Concerns: The HDC Bin

Ms. Mugleston also raised concerns in her February 2002 memo about the HDC bin. The HDC bin is associated with the Deactivation Furnace System (DFS), which burns materials such as fuses, chopped rockets, and other munitions. TR. 37-38. When these materials are first put into the DFS, they contain chemical warfare agent. TR. 38. The DFS is supposed to incinerate the chemical warfare agent. TR. 38. After the materials have been processed through the DFS, the ash and residual waste is discharged into the HDC bin, which is located outdoors. TR. 38, 40, 696. As a BRA RHA operator, Ms. Mugleston performs daily environmental inspections of the HDC bin and changes out the bin when it is full. TR. 39, 341-42, 606, 695-96, 785.

The presence of chemical warfare agent is monitored at TOCDF by continuous air monitoring systems, known as ACAMS. TR. 41. After an ACAMS is alarmed, the results are checked for contamination with the Depot Area Air Monitoring System (DAAMS), which consists of sampling tubes used to confirm the existence of agent. TR. 42. On September 2, 2001, agent from the HDC bin traveled through the atmosphere and caused an ACAMS in the Mechanical Engineering Room (MER) to alarm. TR. 41-43, 295, 342, 606-07, 785-86, 1380, 1424. The presence of chemical warfare agent at that site was confirmed by the DAAMS tubes. TR. 41-43, 295, 342, 606-07, 785-86, 1380, 1424. As a result of the agent detection, the HDC bin was allowed to airwash until the agent was cleared. TR. 44. There was no ACAMS in place in the HDC bin enclosure before the time of this incident. TR. 45, 616, 697,

Tonya Elkington testified that the September 2, 2001 incident was one of only two instances in the history of operations at TOCDF that chemical warfare agent has been released into the atmosphere. TR. 1379. According to Tonya Elkington and Tim Olinger, the incident was reported to State regulators. TR. 1388-89, 1788. As a corrective measure, an ACAMS was installed in the HDC bin enclosure after the incident. TR. 44-45, 296, 616-17, 697-98, 787, 1388-89. This ACAMS is now activated and checked each time before work is performed in the HDC bin area. TR. 46-47, 296, 616-17.

Despite this corrective action, Ms. Mugleston opined that progress regarding issues with the HDC bin has been insufficient. TR. 50, 78, 296. Ms. Mugleston testified the ACAMS in the HDC enclosure has alarmed many times, with at least 20 to 30 of these alarms confirmed for contamination by DAAMS tubes. TR. 45, 2005. Ms.

Mugleston testified that four or five of these times, the HDC bin had to be relocated and air washed. TR. 2005. Ms. Mugleston also testified that DAAMS tubes are not always in place in the HDC bin enclosure. TR. 47-48. As a result, the ACAMS has alarmed on several occasions without any tool to confirm whether there is actually agent. TR. 47-48.

Four weeks prior to the hearing, TOCDF began operations with the chemical warfare agent VX. TR. 619. Steve Land testified that the ACAMS in the HDC bin has alarmed and come back confirmed by the DAAMS tubes two to four times since the VX operation began. TR. 1953-54. Mr. Land testified that there have been a few occasions since the HDC enclosure ACAMS was installed in which the HDC bin had to be relocated and air washed. TR. 1954. Mr. Utley also testified that the ACAMS in the HDC enclosure has alarmed dozens of times since it was installed, with some of those times coming back confirmed by DAAMS tubes. TR. 699-700. Mr. Utley testified that the day before his testimony, the ACAMS in the HDC bin alarmed and came back confirmed by the DAAMS tubes for VX agent. TR. 700.

Tonya Elkington, on the other hand, testified that the ACAMS in the HDC enclosure has come back confirmed by DAAMS tubes only one time since the September 2, 2001 incident. TR. 1512. This one incident was the VX incident referred to by Mr. Utley that occurred during the time of the hearing. TR. 1498, 1501. Ms. Elkington testified that the Environmental Department would become aware of an ACAMS in the HDC bin coming back confirmed by DAAMS because it is an unusual occurrence. TR. 1389-90. Ms. Elkington testified that she would expect to remember such an occurrence because it would require that the HDC bin waste be relocated to a secure area, air washed, re-tested, and investigated. TR. 1512.

Ms. Mugleston raised a concern in her February 2002 memo about doing environmental inspections in the HDC bin without any monitoring system or ACAMS installed. TR. 48-49; RX-37. Ms. Mugleston also raised a concern about the procedure after an ACAMS was installed, including the HDC discharge door being left open while samples are collected. TR. 48-49. Ms. Mugleston explained that the discharge gate door, under EG&G procedure, is not to be left open while BRA RHA operators collect samples so that other contaminants in the area do not affect the sample. TR. 49. Ms. Mugleston testified that there have been many occasions in which the HDC door has been left open during sample collection. TR. 49.

In addition, Ms. Mugleston testified that she has seen on several occasions during her inspections visible residue coming out of the HDC bin enclosure. TR. 40; RX-37. Ms. Mugleston testified that the HDC discharge door slides open and visible plumes of dust blow into the air and into the outside environment. TR. 40; RX-37. Ms. Mugleston believes the dust might on occasion be contaminated with chemical warfare agent. TR.

40-41; RX-37. Steve Land and Jeff Utley both also testified that dust blows out of the HDC bin when the HDC door is opened. TR. 609, 696.

Ms. Mugleston and Mr. Utley testified that BRA RHA operators do not wear protective clothing, a respirator, or a gas mask while working in the HDC bin area. TR. 39-40, 699. Tim Olinger explained that Industrial Hygiene laboratory results showed that employees' exposure to background levels of metals and particulates in raw HDC bin waste was well below OSHA's permissible exposure limits, and accordingly respiratory protection is not required. TR. 1804-05. Ms. Elkington also pointed out that gloves are required in work with the HDC bin and a dust mask is optional. TR. 1387. According to Ms. Elkington, additional protective gear is readily available and employees are free to choose to wear a higher level of protective clothing. TR. 1387-88.

Also at issue is whether Ms. Mugleston's HDC bin concerns relate to polychlorinated biphenyls (PCBs). One of the munitions destroyed at TOCDF is M55 rockets. 1382. These M55 rockets are stored in shipping and firing tubes that contain PCBs. TR. 343, 609, 703, 1381, 1786, 1868. These shipping and firing tubes are burned in the deactivation furnace along with the rockets, with the waste going eventually to the HDC bin. TR. 609-10, 703-04, 1382, 1417, 1868.

Tonya Elkington and Tim Olinger opined that Ms. Mugleston has not raised any safety or environmental concerns that implicate PCBs. TR. 1383-84, 1787. Tonya Elkington testified that if PCBs happened to be left undestroyed as a result of incomplete combustion in the deactivation furnace, then the undestroyed PCBs would more likely be transported to the Cyclone enclosure than the HDC bin. TR. 1417-18, 1420. Ms. Elkington testified that residue from PCBs has been found in the HDC bin, but below the regulatory limits. TR. 1421. Ms. Elkington was not aware whether PCBs are easier or harder to destroy by incineration than chemical warfare agent. TR. 1497. Ms. Elkington testified that the HDC bin waste has been tested for PCBs once at the start of the GB campaign and then at least once every year afterwards. TR. 1468.

6. Complainant's Concerns: SCBA Backpacks

Ms. Mugleston testified that her concern regarding the SCBA back packs has been satisfactorily corrected. TR. 298. Ms. Mugleston had taken issue with the fact that SCBA back packs were sometimes not being put in place at backup entrant stations. TR. 297. Ms. Mugleston testified that a backup entry should not commence until the backups are wearing the SCBA back packs. TR. 297. Ms. Mugleston testified that she has observed entries commenced without the backups wearing the SCBA back pack. TR. 297.

7. Complainant's Concerns: Leaking Munitions

Munitions received at the plant are unloaded in the Container Handling Building (CHB) Unpack area. TR. 61. One of the concerns in Ms. Mugleston's February 2002 memo involved the manner in which known leaking munitions were transported and handled in the Unpack area. TR. 77; RX-37. Ms. Mugleston indicated that these leaking munitions were not transported in an airtight onc, as munitions generally are done, but instead were covered only with vizqueen and transported in a van which did not possess any agent monitoring system. RX-37. Pat Vario testified that he has also raised a concern about leaking munitions and how they are handled. TR. 660. Mr. Vario testified that he was concerned that leaking munitions were not securely packaged. TR. 660.

Tim Olinger testified that leaking munitions are identified in the munitions depot and overpacked into another container to prevent leakage. TR. 1766-67. Mr. Olinger testified that overpacks are supplied and checked by the Army. TR. 1771. Mr. Olinger testified that during the period leading up to the Olympics, EG&G was faced with transporting larger overpacks than it had before. TR. 1775. According to Mr. Olinger, these munitions were transported by van because they were too large to fit inside an onc. TR. 1767-68. Mr. Olinger explained that EG&G sought and received a permit modification from the State of Utah to allow the larger overpacks to be received in a van rather than an onc. TR. 1775-76. Mr. Olinger testified that a Process Hazard Analysis on the proposed way to handle the larger overpacks was completed by EG&G. TR. 1777.

8. Complainant's Concerns: ACAMS Functioning

Ms. Mugleston also raised a concern in her February 2002 memo about the functioning of the ACAMS devices. TR. 138-39; RX-37. She indicated that several incidents have occurred in which workers set off an ACAMS after previously being read clean by other ACAMS upon exiting toxic areas. TR. 139; RX-37. Jeff Utley shared Ms. Mugleston's concern about the reliability of the ACAMS devices. TR. 679-681. With respect to this issue, Tonya Elkington testified that ACAMS in the common stack are tested every four hours and ACAMS throughout the rest of the plant are tested at least once daily. TR. 1374-75.

9. Complainant's Concerns: Agent Samples

In her February 2002 memo, Ms. Mugleston also raised an issue about samples of agent being left in airlocks while waiting to be processed. RX-37. She indicated that in many instances the number of agent samples left in the airlocks is excessive and that agent samples are often left in the airlocks for months. RX-37.

10. Complainant's Concerns: Brine Tank Levels

Ms. Mugleston was also concerned that the fill level of the brine tanks exceeded permitted levels. RX-37. She indicated that the brine tanks should not be filled above the 195" level. However, she had noticed on several occasions that the brine tanks were filled above the 195" level, up to 213". RX-37. Ms. Mugleston indicated that this has been occurring at least since April 2000. RX-37.

11. Complainant's Concerns: SOPs and PRPs

Ms. Mugleston also took issue with the constant amending of Standard Operating Procedures (SOPs) and Plant Operating Procedures or Project Operating Procedures (PRPs). TR. 58-59, 846; RX-37. Performing tasks at TOCDF requires knowledge of these SOPs and PRPs. Ms. Mugleston testified that there are probably over 150 SOPs and PRPs at the plant and that these procedures are constantly changed. TR. 58-59; RX-37. Steve Land testified that his day-to-day work requires familiarity with about 20 procedures. TR. 613. Mr. Land testified that the SOPs are changed on a daily basis, with up to 15 changed at one time. TR. 614. Mr. Land testified that he and others, including workers in the BRA RHA, have raised concerns about the continual amending of the procedures. TR. 615. Likewise, Pat Vario testified that numerous workers have raised concerns about the constant changes in the procedures because it is hard to keep track of all the changes. TR. 665-666.

Tim Olinger testified that these procedures are changed from time to time to ensure that they are correct, safe, and properly implemented. TR. 1835. According to Mr. Olinger, SOPs are changed as the processes change, due to new campaigns or different implementations of engineering changes. TR. 1835. Mr. Olinger testified that the changes generally are not substantial and that employees are made aware at the beginning of shifts of procedural changes through read-and-sign documents. TR. 1835.

12. Complainant's Concerns: LSS Airhoses

Ms. Mugleston in her February 2002 memo also mentioned a concern about Life Support System (LSS) air hoses. The LSS air hoses provide two hours of breathing air for workers during entries into chemical warfare agent contaminated areas. TR. 74-76, 290, 601-02, 710-11. The air hoses feed clean air into an entrant's DPE suit, a large protective suit in which entrants are sealed. TR. 74-75, 290, 710-11. Ms. Mugleston's concern relates to the testing of the air hoses. The air hoses are not tested after each use, but instead only once per 12 or 24 hours. TR. 859-60. Thus, multiple entries are allowed to take place on an air hose before re-testing occurs, allowing for the possibility that the air hose became contaminated with agent without anyone's knowledge. TR. 713-14, 852-53, 941, 1077, 1087-88.

Ms. Mugleston testified that on several occasions, workers have performed entries using LSS air hoses that had become contaminated during prior entries. TR. 81, 290. As a result, the entrants were breathing agent-contaminated air during their entries. TR. 81. Ms. Mugleston testified that this has been an ongoing problem for many years and that management has attempted several times to resolve the issue, but without success. TR. 81-82. Larry Allen testified that he raised this concern about the LSS air hoses four or five years ago to Jeff Forsyth, the Maintenance Manager at the time, to Steve Wallace, the Plant Shift Manager at the time, and to the Safety Department. TR. 853-54. The process lasted for about one year, but was not fruitful. TR. 854.

Tim Olinger testified that the LSS airhoses can be contaminated from permeation through the hoses, by the entrants themselves, or by high ambient readings within the room while the entrants are changing. TR. 1814. Mr. Olinger testified that purge, or bleeder, valves have been added to the LSS system. TR. 1814. These purge valves provide a continuous airflow at each LSS change station so that any small amount of contamination would bleed out of the system. TR. 1814. Mr. Olinger testified that this has helped with the problem but that hoses occasionally still are contaminated. TR. 1814.

Aside from receiving air from the LSS air hoses, DPE suits are equipped with an integral charcoal filter that also filters the air. TR. 1076-77, 1082, 1815, 1819. Mr. Olinger testified that a study conducted by Paul Anderson, the EG&G Safety Industrial Hygienist, indicated that this charcoal filter is able to competently filter two hours of air at an exposure at a level of 300,000 TWA.¹⁶ TR. 1822. Mr. Olinger testified that a contaminated air hose generally reads in only at 2 TWA or lower. TR. 1822-23. Mr. Olinger testified that the charcoal filters in DPE suits have been found to be missing on occasion with self-checking, but that the missing charcoal cartridges were found only prior to the DPE suits being used in an entry. TR. 1888-89, 1940. Mr. Olinger testified that the DPE suits are inspected as part of the dressing process. TR. 1940. Mr. Olinger testified that DPE suits are also inspected after an entry, but the charcoal filter has not been found missing after an entry. TR. 1940.

Ms. Mugleston testified that DSA operators who perform the DPE suit dressings have indicated to her that the charcoal filter has been found to be missing upon inspection of DPE suits after the suits have been used in entries. TR. 1997-98. Ms. Mugleston testified that the DPE suits are not inspected prior to entries. TR. 1998.

¹⁶ Time Weighted Average, or TWA, refers to the level of exposure in a contaminated environment. TR. 1079.

Jason Wright, formerly a Waste Technician,¹⁷ testified that he has performed about 160 DPE entries as part of his duties. TR. 932. Mr. Wright testified that entrants are given a physical exam by the clinic prior to entries. TR. 932-33. A pre-entry meeting is also held before every entry, involving a Shift Safety Representative, an Environmental Representative, the Plant Shift Manager, the Operations Supervisor, a DSA operator, the two entrants, and two backup entrants. TR. 933. Mr. Wright testified that a DPE entry usually lasts about two hours. TR. 933. The entrants' heart rates are monitored by a paramedic, and their movements are monitored by a control room operator by way of radio and video contact. TR. 933-35.

Mr. Wright testified that he has never been encouraged or forced to use an LSS air hose that was known to be contaminated. TR. 937. Mr. Wright testified that if an air hose is used and is subsequently revealed to be contaminated, then the entrant is taken to the clinic for a blood test to check his/her Cholinesterase (CHE) level. TR. 936, 1078. The entrant's CHE level would be depressed if the entrant were exposed to agent. TR. 936. Mr. Wright testified that he used an air hose on one occasion that was subsequently revealed to be contaminated. TR. 936-37. He testified that his CHE levels tested normal afterward. TR. 936-37.

Christie Warburton, a Waste Technician,¹⁸ testified that she has performed about 140 DPE entries as part of her duties. TR. 1073-74, 1078. According to Ms. Warburton, an airhose is put out of use if it tests positive for contamination. TR. 1077. Ms. Warburton testified that she has never been forced nor encouraged to use a hose that had been tested positive on a previous test. TR. 1079-80. As with Jason Wright, Ms. Warburton has used an air hose that subsequently tested to be agent-contaminated. TR. 1078. Ms. Warburton testified that her CHE levels also was found to be normal after testing. TR. 1079.

13. Complainant's Concerns: Failure to Follow Procedures For Entries

Ms. Mugleston in her February 2002 memo also raised a concern about the failure to follow procedures during entries. RX-37. On July 15, 2002, Matt Glavin¹⁹ was sent into the Liquid Incinerator (LIC) Primary Room for an entry to replace a plant air regulator. TR. 291, 886-87, 1825; RX-37. The ACAMS alarmed and Matt Glavin was contaminated with chemical warfare agent. TR. 1825. The presence of agent had been

¹⁷ Jason Wright has worked for EG&G since December 1998. TR. 921. He was employed as a Waste Technician until one week prior to his testimony, at which time he began working in the Control Room. TR. 921.

¹⁸ Christie Warburton has been a Waste Technician at EG&G for about three years. TR. 1073.

¹⁹ Mr. Glavin has been employed by EG&G for about five years and currently works as a control room operator. TR. 1175.

observed under similar circumstances on an earlier occasion in another LIC room. TR. 1825-26. However, there was a failure in communication such that Matt Glavin was not made aware of the previous incident. TR. 1826.

At the time of the incident, Matt Glavin was wearing modified level A protection rather than a full DPE suit. TR. 676-78, 1840-41. This was because the LIC incinerator room temperature was too high to allow use of a DPE suit. TR. 676-78, 1840-41. Tim Olinger took responsibility for the decision to send Matt Glavin into the entry at that time with the modified level A protection rather than waiting for the room to cool. TR. 1841. Ms. Mugleston testified that she raised this concern in her memo because of the communication failure regarding the prior LIC room incident and because Matt Glavin should have never been sent into the entry using inadequate protective gear. TR. 293.

Mr. Olinger testified that the July 15, 2002 incident was fully investigated by EG&G, the Army, and State regulators. TR. 1826. Mr. Olinger testified that there was no concealment related to the issue. TR. 1827. Mr. Olinger testified that corrective actions following the incident included improving communication, work planning, and engineering involvement in the work planning process, addressing agent boundary determination measurements, improving oversight, developing safety improvement plans, developing Board of Inquiry plans, and involving mentors on site to help mentor the work planning process and conduct of operations. TR. 1827-28. Mr. Olinger testified that the incident was significant and that there were about 40 to 50 corrective actions as a result of the incident. TR. 1827-28.

14. Complainant's Concerns: Automatic Waste Feed Cutoffs

Ms. Mugleston also raised a concern in her February 2002 memo about automatic waste feed cutoffs. Each of EG&G's furnaces have various parameters that are controlled to ensure that waste is not fed into a furnace beyond its parameters. TR. 284, 1845. An automatic waste feed cutoff refers to an automatic cutoff to a furnace that reaches one of its parameters. TR. 284, 1845. Ms. Mugleston testified that she has been in the control room on several occasions in which alarms for the waste feed cutoff have been acknowledged and turned off, without any remedial action being taken. TR. 285-87.

Mr. Olinger testified that a control room operator who receives an automatic waste feed cutoff alarm must locate the alarm, acknowledge it, attempt to determine the cause, and record the results. TR. 1845. Mr. Olinger testified that in the 2001 time frame, there was a problem with control room operators reporting the cause of waste feed cutoffs only as: "unknown, cleared, and resumed feeding." TR. 1845-47. He testified that the control room operators were admonished to be more attentive and thorough about the issue. TR. 1846-48.

15. Complainant's Concerns: Inadequate Incident Reporting

Ms. Mugleston also raised a concern about inadequate incident or occurrence notification reports, including the failure to prepare incident reports for dust blowing out of the HDC bin enclosure and for problems with the Cyclone drum enclosure. TR. 287; RX-37. Ms. Mugleston testified that it is the responsibility of an employee in the CPRP program to report environmental and safety incidents to the employee's lead and, if necessary, higher management. TR. 288-89. According to Ms. Mugleston, emissions came out of the HDC bin on a continual basis for the first five or six years of doing HDC bin inspections and change outs, but that operators including herself were not aware that it was a reportable incident. TR. 321. Ms. Mugleston testified that workers had not been trained prior to the September 2, 2001 incident that dust from the HDC bin was a reportable incident. TR. 321-22.

Tonya Elkington testified that BRA RHA workers, including Ms. Mugleston, are required to report spills from the HDC bin. TR. 1398-1400. Likewise, Tim Olinger testified that Ms. Mugleston should report witnessing a plume of dust blow out of the HDC bin enclosure. TR. 1792. Mr. Olinger testified that workers are trained to report unusual occurrences that raise a fugitive emission concern. TR. 1792. Mr. Olinger testified that no one had reported to him that dust was being emitted from the HDC bin and that he first learned that dust or particulate had been or could be released from the HDC bin from Ms. Mugleston's memos. TR. 1874-75. Mr. Olinger has not issued any disciplinary action to Ms. Mugleston or any other employee for failing to report a release of dust from the HDC bin and does not intend to do so. TR. 1875.

16. Inadequate Waste and Munitions Tracking

Ms. Mugleston also mentioned in her February 2002 memo a concern about inadequate waste and munitions tracking. TR. 55-57; RX-37. Mercury has been handled at EG&G. TR. 55. Ms. Mugleston testified that there has been an issue regarding the whereabouts of the mercury within the filter system, without anyone being able to locate the mercury. TR. 56-57. Ms. Mugleston also raised a concern that BRA RHA operators were not required to wear full face masks or use respiratory cartridges during the first three to four months of handling mercury. TR. 56. After investigations were performed by Utah and by EG&G, BRA RHA operators began having to wear full face respirators. TR. 56. Jeff Utley and David Palmer, a Mechanical Technician in Maintenance,²⁰ testified that Sean McLatchey, a Hazardous Waste Manager, at one time indicated to them that he could not locate the mercury that was being handled at the plant, as the mercury was not found in the BRA tanks, brine, or the filters. TR. 338, 689.

²⁰ David Palmer has been employed by EG&G for just over two years. TR. 327. Mr. Palmer worked with Ms. Mugleston in the BRA RHA prior to moving to Maintenance. TR. 327.

Tonya Elkington acknowledged that it is necessary to remove as much mercury from processed waste as possible because mercury is very hazardous. TR. 1486. Ms. Elkington testified that during the process of incineration, mercury is not disposed of by the Pollution Abatement System (PAS) so as to travel into waste containers or brine. TR. 1403. Instead, the mercury safely emits directly out the flue gas of the incinerator. TR. 1403.

17. Complainant's Concerns: Cyclone Operations

Ms. Mugleston testified that as a BRA RHA operator, she also performs daily environmental inspections of the Cyclone enclosure and changeouts of the Cyclone drum, which contains hazardous ash from the deactivation furnace. TR. 51. The Cyclone swirls the air coming from the deactivation furnace in order to separate and drop out fiberglass. TR. 617. Ms. Mugleston's Cyclone concern stemmed from an incident in which the Cyclone became plugged up and several workers were exposed to ash during a drum change out. TR. 79. Ms. Mugleston testified that the ash saturated the workers' full face respirator and melted the workers' Tyvek, a form of protective gear. TR. 79. Steve Land testified that dust and ash would sometimes adhere to the sides of the Cyclone walls, forming a bridge and preventing materials from falling into the drum. TR. 618. Mr. Land testified that this concern has been raised to management by BRA RHA workers. TR. 618. Mr. Land testified that the issue has yet to be resolved. TR. 618.

Tonya Elkington acknowledged that there was an incident in which some employees attempted to probe the chute from the Cyclone to dislodge a quantity of clogged material. TR. 1401. Ms. Elkington testified that following this incident, the Engineering Department was tasked with evaluating the best method to prevent pluggage in the Cyclone. TR. 1401. In addition, the SOP was changed to read that the operator should stop all operations and notify his/her supervisor upon suspicion of pluggage. TR. 1401. Ms. Elkington testified that there was no concealment from regulators regarding the Cyclone incident. TR. 1402.

A. EG&G's Adverse Employment Actions Against Ms. Mugleston

1. PDI

Ms. Mugleston testified that upon reviewing her personnel file, she noticed that she had been assigned several items of potentially disqualifying information (PDI). TR. 87. PDI is associated with the Army CPRP program and is any information that might reflect on an employee's reliability or ability to perform his/her duties. TR. 1094-95. Ms. Mugleston testified that some of the PDI was inaccurate and very hostile. TR. 87,

162. This prompted her infer that the PDI was retaliation for her safety and environmental concerns. TR. 87.

Robert Rothenberg²¹ works as a government shift representative at TOCDF. TR. 1092-93. His primary duty as a government shift representative is making sure that TOCDF is run in a safe and secure manner in accordance with the contract between the Army and EG&G. TR. 1093. Mr. Rothenberg also has many ancillary duties, one of which is serving as a Certifying Official for CPRP employees. TR. 1093. Mr. Rothenberg testified that a Certifying Official has the responsibility of evaluating PDI and deciding whether an individual is fit for the CPRP program. TR. 1094, 1101.

Mr. Rothenberg explained that the Army maintains a Chemical Surety Program, whose purpose is to ensure that people who work in positions which have access to chemical surety materials, chemical weapons, or chemical agents, meet high standards of reliability. TR. 1094. Mr. Rothenberg testified that as a Certifying Official, he has the responsibility of reviewing medical, personnel, and security records of workers to make an initial determination of suitability for the CPRP program. TR. 1093. Mr. Rothenberg thereafter has the responsibility of continuing observation of the workers while they are in the program. TR. 1093.

Mr. Rothenberg testified that the process for CPRP certification begins with an individual becoming a candidate for CPRP certification. TR. 1100-01. This occurs when an individual is selected for a position that is in the CPRP. TR. 1100-01. The individual then is medically screened, and a physical security inspection is requested on the individual. TR. 1101. Next, the HR office reviews the individual's files for any PDI. TR. 1101. The individual then undergoes the training required for his/her position. TR. 1101. The Certifying Official will then interview the individual and review the physical security investigation results, as well as the HR, security, and medical records, to make a determination as to whether or not the person is fit for CPRP approval. TR. 1101. If all goes well, then the person is enrolled in the program. TR. 1101.

Mr. Rothenberg oversees about 135 to 140 employees as a Certifying Official, including Ms. Mugleston. TR. 160, 1094. He testified that with respect to his 135 to 140 employees, he receives about two items of PDI daily. TR. 1095. Mr. Rothenberg testified that he sometimes receives stacks of PDI, especially during periods of performance appraisals. TR. 1096. Mr. Rothenberg testified that EG&G's only role in relation to an employee's CPRP status is disclosing PDI. TR. 1124. He testified that everyone in the CPRP at EG&G has a responsibility for continuous observation of all other personnel who are in the CPRP. TR. 1097. Each of these individuals has a responsibility for reporting PDI, including self-reporting of PDI, as does EG&G's HR

²¹ Robert Rothenberg is employed by the U.S. Army Chemical Management Agency (CMA), which was preceded by the institution known as PMCD until shortly before the hearing. TR. 1092-93.

office, medical clinic, and security office. TR. 1097. According to Mr. Rothenberg, PDI is not necessarily negative information, but is any information reflecting a change in a person's status. TR. 1095. Mr. Rothenberg testified that the most common information comprising PDI is medical information, such as injuries, illnesses, and medication. TR. 1095.

Mr. Rothenberg testified that the Certifying Official makes the decision if the PDI that is sent is disqualifying information. TR. 1096. Mr. Rothenberg testified that he evaluates the PDI, and the PDI is put in the shredder if it has no bearing. TR. 1096-97, 1112. If PDI surfaces that the Certifying Official believes makes the employee's reliability questionable, then the employee is temporarily disqualified from the CPRP program and blocked from accessing the exclusion areas of TOCDF. TR. 1101-02. The incident giving rise to the PDI is then investigated by the Certifying Official. TR. 1102. The certifying official then makes a determination either to remove the temporary disqualification and reinstate the employee to the CPRP, or to permanently disqualify the employee. TR. 1102. If the employee is permanently disqualified, then the employee is given five days to respond to the charges for the permanent disqualification. TR. 1102-03. Based on this appeal, the Certifying Official may elect to remove the disqualification and put the employee back in the program, or to continue with the permanent disqualification action. TR. 1103. If the permanent disqualification is upheld, then all the information related to that disqualification is sent to a reviewing official, who will then either sustain or overturn the Certifying Official's decision. TR. 1103.

Mr. Rothenberg testified that with respect to information that possibly is PDI, the rule of thumb is that the sender should err on the side of disclosure and send the information to the Certifying Official if there is some uncertainty. TR. 1096-97, 1126. Mr. Rothenberg testified that he gives this advice when he receives phone calls asking whether information should be submitted as PDI. TR. 1097. Debbie Sweeting testified that she has received this advice from Certifying Officials, and that the PDI policy for the HR office regarding what should and should not be sent is based on this advice. TR. 477-78. With respect to Ms. Mugleston, PDI was submitted referencing a reprimand she received for failing to wear her hard hat, Ms. Mugleston's March 1999 divorce, and medical information, as well as Ms. Mugleston's October 2001 memo, February 2002 memo, correspondence to EG&G from Ms. Mugleston's attorney, and documents referencing Ms. Mugleston's first DOL complaint and her settlement. TR. 479-480, 485, 508, 525, 533, 1113; RX-39. In addition, Ms. Sweeting submitted PDI with respect to Ms. Mugleston's emotional state during a November 27, 2001 meeting and two emails sent from Steve Wallace to Debbie Sweeting referring to an incident in which Ms. Mugleston refused to perform a task at work. TR. 469-73, 515-20.

Mr. Rothenberg testified that the Army, as well as other government agencies, such as the Department of Army Inspector General's (IG) Office, conducts audits of EG&G's reporting of PDI. TR. 1100. These audits are conducted to ensure that all PDI

has been submitted to the Certifying Official for his/her consideration and to ensure that EG&G's personnel actions are appropriate with respect to its employees. TR. 1100. Mr. Rothenberg testified that there has been no unusual pattern of PDI with respect to Ms. Mugleston. TR. 1105. Mr. Rothenberg testified that at no time did any manager, HR worker, or medical worker submit any PDI on Ms. Mugleston that was inappropriate. TR. 1106. He testified that there was a period of time in which more PDI was submitted on Ms. Mugleston quantity wise than most other people, but Mr. Rothenberg never noticed any difference as far as the appropriateness of the PDI. TR. 1106.

Mr. Rothenberg testified that information indicating that Ms. Mugleston was excessively upset at the November 27, 2001 meeting was appropriately submitted as PDI, as the information related to concerns that Ms. Mugleston's attitude and mental state were such that her reliability might be affected. TR. 1100. Mr. Rothenberg testified also that he would not consider disqualifying an employee from the CPRP because the employee reported environmental violations, refused to perform a task the employee perceived as unsafe, or filed a whistleblower complaint with the Department of Labor. TR. 1113, 1123-24. According to Mr. Rothenberg, Ms. Mugleston's CPRP status is in good standing at the moment. TR. 1123.

Mr. Rothenberg's explanation of the effects and evaluation of PDI is supported by the testimony of Tim Kutz, the Agent Safety Security Specialist at EG&G,²² and Steve Byrne, a physician assistant at TOCDF.²³ Mr. Kutz testified that he has no role in relation to individuals acquiring or maintaining CPRP status at TOCDF. TR. 421-23. Mr. Kutz testified that this duty belongs to the Army Certifying Official. TR. 422. Mr. Byrne testified that the medical clinic's role with the CPRP is to evaluate whether there are any physical or psychological issues that would preclude a person from being in the CPRP. TR. 966. According to Mr. Byrne, the clinic reports PDI and makes recommendations, but only the Certifying Official can restrict a person's CPRP status. TR. 971-72. Mr. Byrne testified that every medical entry made for CPRP employees requires a determination by the medical clinic as to whether or not the development is PDI. TR. 973.

2. Hard Hat Incident

On April 8, 2002, Ms. Mugleston received a written reprimand from EG&G relating to a March 25, 2002 incident in which she failed to wear her hard hat in accordance with EG&G's safety rules. RX-14. Ms. Mugleston signed her hard hat

²² Tim Kutz has been employed by EG&G as the Agent Safety Security Specialist since April 1997. TR. 407. As Agent Safety Security Specialist, Mr. Kutz is responsible for ensuring that chemical agent is secured. TR. 407.

²³ Mr. Byrne has been a physician assistant at TOCDF for about nine years. TR. 945. He is a mid-level practitioner that provides medical care for EG&G employees. TR. 945.

reprimand under protest and offered to take a polygraph test, asserting that the allegations made against her were false. TR. 163, 566.

a. Complainant's Version

Ms. Mugleston's account of what occurred during the hard hat incident is decidedly different from EG&G's version of events. According to Ms. Mugleston, she had just showered out and was leaving the facility with Jeff Utley. TR. 89. On her way out, she saw two of EG&G's safety representatives and heard one of the safety representatives, Ryan Taylor, ask a group of individuals to put on their hard hats. TR. 89. When Ryan Taylor approached Ms. Mugleston, Ms. Mugleston asked him whether the hard hat policy was going to be changed. TR. 89-90. Ms. Mugleston explained that there is an issue with whether the hard hats, which are not cleaned regularly, are contaminated with residue, ash, and debris from working in hazardous areas. TR. 89-90. Ms. Mugleston testified that Ryan Taylor had indicated he was trying to change the procedure so that workers would not need to put the filthy hard hat back on after showering out to go home. TR. 90.

Ms. Mugleston testified that Ryan Taylor indicated the procedure of wearing hard hats was not going to change. TR. 91. Ms. Mugleston testified that she then jokingly asked Bruce Anderson, the second safety representative, about whether he was going to have the procedure changed. TR. 91. According to Ms. Mugleston, Bruce Anderson indicated he was not pursuing the issue. TR. 91. Ms. Mugleston testified that Bruce Anderson and Ryan Taylor then checked out and exited the facility. TR. 91.

According to Ms. Mugleston, Ryan Taylor at no point asked her to put on her hard hat. TR. 91. Ms. Mugleston testified that she would have had no problem putting on her hard hat if she had been asked to do so. TR. 91. She explained that she had taken off her hard hat because a barrette in her hair had come unsnapped and she was adjusting the barrette. TR. 91-92. Ms. Mugleston testified that she was holding her hard hat at her side under her arm after her barrette fell out. TR. 2003. She testified that she has never carried her hard hat slung through her gas mask. TR. 2003.

Ms. Mugleston also testified before the Court that on the day of the hard hat incident, she did not understand that failing to wear a hard hat inside the double fence, *i.e.*, the processing portion of TOCDF, after being reminded to do so was a safety violation. TR. 364, 2018-19. However, during her deposition, Ms. Mugleston testified that she was aware that the safety policy at the time of the hard hat incident required wearing a hard hat in all places inside the double fence. TR. 2019-21. Ms. Mugleston also agreed in her deposition that not wearing a hard hat inside the double fence after being reminded to do so is a safety violation. TR. 2019-21. Ms. Mugleston maintained before the Court that not wearing a hard hat near the exiting area of the facility was not unsafe because there are no hazards overhead and that no written procedure was violated

by her not wearing her hard hat at that time. TR. 91, 2022. Ms. Mugleston testified that she has witnessed employees and managers in many instances not wearing their hard hats in required areas. TR. 141-42. Ms. Mugleston testified that these individuals were not reprimanded or even questioned. TR. 142.

b. Jeff Utley's Version

Jeff Utley testified that he and Ms. Mugleston were leaving the facility to go home when he heard Bruce Anderson and Ryan Taylor questioning Barry Williams, Greg Veehil, and Jason Wright about their hard hats. TR. 672. Mr. Utley testified that neither Bruce Anderson nor Ryan Taylor said anything to him or Ms. Mugleston during the incident. TR. 673. Mr. Utley testified that he was right next to Ms. Mugleston, and he did not hear Ryan Taylor say to Ms. Mugleston that she needed to put on her hard hat. TR. 673. Mr. Utley testified that Ms. Mugleston at no time during the incident refused to obey an order given to her by a safety official. TR. 674. Consistent with Ms. Mugleston's testimony, Mr. Utley testified that Ms. Mugleston had taken off her hard hat after her barrette had fallen undone and that Ms. Mugleston was holding her hard hat tucked under her arm. TR. 1963-64. Mr. Utley was wearing his hard hat during the hard hat incident. TR. 748.

c. Bruce Anderson's Version

In order to get inside the double gated portion of TOCDF, one must be cleared through the Entry Control Facility (ECF). TR. 365. According to Bruce Anderson, employees are required to wear a hard hat while inside the double fenced area, except in certain designated buildings and administrative offices. TR. 365-66. Bruce Anderson testified that on March 25, 2002, at about 5:45 p.m., he and Ryan Taylor were leaving TOCDF to go home when they encountered several people who were coming into the facility. TR. 363, 366-67, 378, 380-81. Mr. Anderson testified that he and Ryan Taylor told these people to put on their hard hats. TR. 378. According to Mr. Anderson, Mr. Anderson encountered Greg Veehil and reminded him to put on his hard hat and Ryan Taylor told three other employees who were coming in to put on their hard hats. TR. 379. Mr. Anderson testified that the only one of the trio he knew was Marty Ahlstrom, who apparently was escorting two new employees. TR. 379.

Mr. Anderson and Mr. Taylor then continued toward the exit of the facility, at which time they encountered Jason Wright inside the double fence near the ECF. TR. 363, 366-67, 380-81. Mr. Anderson testified that Jason Wright was not wearing his hard hat and that Ryan Taylor told Mr. Wright to put on his hard hat. TR. 363-64, 366-67. According to Mr. Anderson, Mr. Wright indicated that he would oblige. TR. 367.

Mr. Anderson testified that after speaking to Jason Wright, he and Ryan Taylor encountered Ms. Mugleston and Jeff Utley, who were leaving the facility. TR. 367, 380-81, 399-400. Mr. Anderson testified that Ms. Mugleston was in the area where she was supposed to wear her hard hat. TR. 405. According to Mr. Anderson, Ms. Mugleston would probably have had to walk another 50 to 100 feet before she would no longer be required to wear her hard hat. TR. 376-77. Mr. Anderson testified that Ms. Mugleston was not wearing her hard hat and that Ryan Taylor told her that she needed to wear her hard hat too. TR. 367, 399-400. Mr. Anderson testified that he was physically about one foot away from Mr. Taylor when Mr. Taylor told Ms. Mugleston to put on her hard hat. TR. 375, 399. Mr. Anderson testified that Mr. Taylor was probably about three to five feet from Ms. Mugleston at the time. TR. 367-68, 399. Mr. Anderson testified that he was sure Ms. Mugleston heard Mr. Taylor tell her to put on her hard hat because Mr. Taylor was talking directly to Ms. Mugleston in a conversation exchange. TR. 352. Mr. Anderson testified that Ms. Mugleston responded that she would not put on her hard hat because she had a meeting to attend and did not want to mess her hair up. TR. 368, 405. Mr. Anderson testified that Ms. Mugleston then commented that she thought the hard hat requirement was going to be lifted. TR. 368. Mr. Anderson testified that he did not speak during the encounter with Ms. Mugleston and Mr. Utley. TR. 380-81, 399.

Mr. Anderson testified that the hard hat policy had been in place for about two years, since approximately March of 2000. TR. 385. Mr. Anderson testified that EG&G had considered a change to the hard hat rule, but that the change failed after a trial period. TR. 368-69. Mr. Anderson explained that the change sought would have lifted the requirement to wear hard hats in areas where there is nothing overhead that could fall down on one's head. TR. 368-69. According to Mr. Anderson, the General Manager of the plant made the requirement to wear hard hats inside the double fence permanent after a worker suffered a head injury and it was noticed that workers would not put on their hard hats after moving from a non-hard hat designated area to a hard hat-required area. TR. 368-69, 389.

Mr. Anderson testified that he produced a memorandum the morning after the hard hat incident detailing his account of what happened, as is ordinarily done after an incident at TOCDF. TR. 362, 397-98. Mr. Anderson also met with Rita Lucero, an OSHA Labor Department investigator, about the hard hat incident about six to eight months after the incident. TR. 373-74. Mr. Anderson testified that he told Ms. Lucero the same story that he testified to at the hearing, including that Ryan Taylor did in fact tell Ms. Mugleston she needed to wear her hard hat and that Ms. Mugleston refused to put on her hard hat, stating that she had a meeting to attend and did not want to mess up her hair. TR. 352-53, 374.

d. Jason Wright's Version

With respect to Jason Wright's version of the hard hat incident, Mr. Wright explained that he was entering the first of two turnstiles at the entrance of TOCDF when he was reminded to put on his hard hat by Ryan Taylor. TR. 921-23. Mr. Wright indicated he would do so after passing the second turnstile. TR. 922. However, Mr. Wright thereafter became distracted and forgot, proceeding on without putting on his hard hat. TR. 922. Mr. Wright testified that he received a written reprimand for the incident. TR. 922-23. Mr. Wright testified that company policy enacted prior to March 25, 2002 required that hard hats be worn while entering and exiting the facility. TR. 929.

Mr. Wright testified that after he entered the second turnstile, he observed Ryan Taylor turn to Ms. Mugleston and say to her that she needed to put on her hard hat. TR. 923. Mr. Wright testified that he was 100% sure he heard Ms. Mugleston say that she would not put on her hard hat because she had a meeting and did not want to mess up her hair. TR. 924. Mr. Wright testified that Bruce Anderson was also present, along with other individuals behind Ms. Mugleston, the identity of whom Mr. Wright did not recall. TR. 924. Mr. Wright testified that he made a statement for the company a day or two after the incident. TR. 925.

e. Ryan Taylor's Version

Ryan Taylor testified that en route to exiting TOCDF, he and Bruce Anderson observed a couple of people not wearing hard hats. TR. 1019-20. Mr. Taylor testified that he and Bruce Anderson then split up to ask the people to put on their hard hats. TR. 1020. Mr. Taylor testified that he talked to some individuals and they indicated they did not have their hats with them but would go get them. TR. 1020. Mr. Taylor testified that he and Mr. Anderson then continued toward the ECF, where he encountered Jason Wright heading in to work. TR. 1021, 1040. Mr. Taylor testified that he reminded Jason Wright to put on his hard hat after Mr. Wright entered the facility. TR. 1021. Mr. Taylor testified that at that time, Ms. Mugleston and Mr. Utley approached him and Mr. Anderson from behind, and he noticed Ms. Mugleston had her hard hat slung on her mask carrier. TR. 1021, 1040-41.

Mr. Taylor testified that he asked Ms. Mugleston why she was not wearing her hard hat, and Ms. Mugleston responded that she had a meeting that night and did not want to mess up her hair. TR. 1021-22. Mr. Taylor testified that he told Ms. Mugleston she needed to wear her hard hat. TR. 1022. According to Mr. Taylor, Ms. Mugleston then commented that she thought Mr. Taylor and Mr. Anderson were getting the hard hat requirement changed. TR. 1022. Mr. Taylor testified that he responded that he had

raised the issue but the policy was not being changed. TR. 1022. Mr. Taylor testified that Ms. Mugleston did not put on her hard hat. TR. 1022.

After the encounter with Ms. Mugleston, Mr. Taylor exited the facility and proceeded to his carpool, where he discussed the incident with Burke Leatham, an Operations Superintendent. TR. 1023. Mr. Taylor testified that he told Mr. Leatham, who works for Tim Olinger, the names of the people involved. TR. 1039-40. According to Mr. Taylor, he then spoke about the hard hat incident the next morning at EG&G's 6:15 a.m. management meeting. TR. 1023. Mr. Taylor testified that without using names, he indicated that a he had observed some people between the ECF and Personnel Maintenance Building (PMB) not wearing their hard hats. TR. 1024. Mr. Taylor testified that he reported the incident for the purpose of getting the leads and supervisors to stress the issue with their personnel. TR. 1024, 1069.

According to Mr. Taylor, Tim Olinger after the meeting wanted to know the names of the employees involved in the incident. TR. 1024. Mr. Taylor thereafter told Mr. Olinger. TR. 1024. Mr. Taylor testified that although he did not use names during the 6:15 meeting, Mr. Leatham was present at the meeting and already knew the names of the individuals involved. TR. 1042-43. Mr. Taylor was unsure whether or not Mr. Leatham had spoken to Mr. Olinger about the incident. TR. 1043-44. Mr. Taylor testified that he formulated a statement for EG&G about the incident shortly after the 6:15 a.m. management meeting was concluded. TR. 1026, 1048. Mr. Taylor testified that he was never told Ms. Mugleston was going to receive a reprimand and he never himself recommended a reprimand. TR. 1050. Mr. Taylor testified that he did not know who came to the decision to issue Ms. Mugleston a reprimand. TR. 1050-51.

f. Investigation of Hard Hat Incident

Debbie Sweeting testified that as a HR representative, she was involved in gathering facts about the hard hat incident and conducting an investigation. TR. 1277. Ms. Sweeting testified that she received a briefing of the hard hat incident from Tim Olinger. TR. 1279. Ms. Sweeting understood that Jason Wright was accused, Ms. Mugleston was accused, and that there were some new employees involved who could not be identified. TR. 1280. Ms. Sweeting testified that it was suspected that Barry Williams might have been escorting them. TR. 1280. Ms. Sweeting also understood that a Battelle²⁴ employee, Greg Veehil, was involved in the incident. TR. 1280.

Ms. Sweeting testified that the day after the hard hat incident, she gathered statements from Safety Representatives Ryan Taylor and Bruce Anderson, and from employees, including Jason Wright, Barry Williams, and Greg Veehil. TR. 1281-84. Ms. Sweeting testified that she and Tim Olinger spoke to the individuals verbally and

²⁴ Battelle is a separate entity involved in the functions at TOCDF, including the testing of air hoses. TR. 711.

asked also them to make a written statement. TR. 1281-84. On March 27, 2002, Ms. Sweeting and Tim Olinger spoke to Ms. Mugleston and Mr. Utley and asked for written statements. TR. 1285-86, 1289.

Ms. Sweeting testified that there were statements from multiple witnesses indicating that Ms. Mugleston did not put on her hard hat after being reminded to do so by Ryan Taylor. TR. 1224. Ms. Sweeting testified that Ms. Mugleston and Mr. Utley had a completely different version of what happened. TR. 1224. Ms. Sweeting testified that due to this discrepancy, Ryan Taylor and Bruce Anderson were re-interviewed. TR. 1290. Ms. Sweeting testified that during this second interview, she asked Mr. Taylor where Ms. Mugleston's hard hat was. TR. 1290-91. Ms. Sweeting testified that Mr. Taylor demonstrated that Ms. Mugleston's hard hat was slung on her gas mask. TR. 1290-91. Ms. Sweeting testified that Tim Olinger also asked Ryan Taylor whether he was sure Ms. Mugleston was not merely removing her hard hat momentarily to fix her hair. TR. 1291. According to Ms. Sweeting, Mr. Taylor replied that he was absolutely sure. TR. 1291. Ms. Sweeting testified that Ryan Taylor was also shown a log from the ECF in an attempt to identify the other individuals involved. TR. 1292. According to Ms. Sweeting, Mr. Taylor could not identify the other individuals, indicating that he did not believe he had even seen those individuals before. TR. 1292. Ms. Sweeting testified that Bruce Anderson was then called in to the meeting. TR. 1293-94. Ms. Sweeting and Mr. Olinger at that time discussed with Bruce Anderson and Ryan Taylor the conflicting stories they had received from Ms. Mugleston and Mr. Utley. TR. 1293-94.

Ms. Sweeting testified that Jimmy Clark, the Deputy General Manager of Operations at the time, considered terminating Ms. Mugleston for knowingly violating a safety policy. TR. 1225. Ms. Sweeting testified that because EG&G errs in favor of the employee when there are discrepancies in reports, it was decided that Ms. Mugleston would only be reprimanded and not terminated. TR. 1225-26. Ms. Sweeting testified that on March 27, 2002, Jimmy Clark initiated the idea of issuing a reprimand to Ms. Mugleston for the hard hat incident. TR. 1276, 1306.

Tim Olinger testified that he has had several meetings with Ms. Mugleston regarding the hard hat incident, including the meeting in which Ms. Mugleston was presented the reprimand. TR. 1913-14. Mr. Olinger recalled that he participated in the investigatory interviews related to the hard hat incident. TR. 1914. Mr. Olinger testified that he understood Ms. Mugleston's position at the time to be that she was never directly told to put her hard hat on, so she did not feel that she refused to do it. TR. 1916.

Bobbie Earp, a BRA RHA operator,²⁵ recounted that Barry Williams was involved in the hard hat incident. TR. 766. Ms. Earp testified that Barry Williams told her that he had received a phone call at home, asking him if he would change his story about the reason he was not wearing a hard hat. TR. 766. According to Ms. Earp, Mr. Williams told her that he said he would not lie and change his story. TR. 766.

Barry Williams' testimony did not corroborate Ms. Earp's testimony. Mr. Williams testified that the day after the hard hat incident, he received a call at home from Tim Olinger. TR. 812-13. Mr. Williams testified that Mr. Olinger mistakenly believed at the time of the call that Mr. Williams had not worn his hard hat on March 25, 2002. TR. 812-15. Mr. Williams testified that this was not the case and that no one asked him on March 25, 2002 to put on his hard hat. TR. 812-13. Mr. Williams testified that after an in-person meeting with Mr. Olinger and Ms. Sweeting, Mr. Olinger realized that he had misunderstood the information implicating Mr. Williams and Mr. Olinger came to the conclusion that Mr. Williams was not in fact involved in the hard hat incident. TR. 815, 821-22. Mr. Williams testified that he has not been subject to any disciplinary action in connection with the hard hat incident. TR. 814. Mr. Williams testified that neither Mr. Olinger nor any other EG&G manager asked him to change his side of the story in any way. TR. 813, 817-18. Mr. Williams testified that he never told anyone he was asked to change his story or statement. TR. 818.

Jeff Utley, Pat Vario, Cliff Lee, Von Taylor, Jason Wright, Bruce Anderson, and Ryan Taylor all acknowledged that it is not unusual for employees or managers to forget to wear their hard hats or safety glasses. TR. 359, 370-71, 659, 675, 883-84, 897-98, 926, 1027. When this occurs, it is customary to remind the individual to put on his/her gear. TR. 371, 932, 1027-28. Mr. Anderson testified that if the individual puts on the gear after being reminded, then the individual will not get in trouble. TR. 370.

g. Water Bottle Room Conversation

Ms. Mugleston testified that after the hard hat incident, she tried to call Bruce Anderson at home but was not successful. TR. 120. Ms. Mugleston thereafter managed to talk to Mr. Anderson while at work. TR. 120. This conversation occurred in April 2002. TR. 166. According to Ms. Mugleston, she and Mr. Anderson spoke privately in the water bottle room, as Mr. Anderson indicated that he did not want to speak with her in front of the other workers. TR. 120. Ms. Mugleston testified that during this conversation Mr. Anderson informed her that he did not want to get involved in the hard hat situation. TR. 121. Ms. Mugleston testified that Mr. Anderson revealed to her that he never heard Ryan Taylor tell her to put on her hard hat. TR. 121. Ms. Mugleston

²⁵ Ms. Earp has been a BRA RHA operator at EG&G for about five years. TR. 751. She has worked at EG&G for almost 7½ years, first with Maintenance and then in the warehouse before going to the BRA RHA. TR. 751. Ms. Earp testified that she has worked with Ms. Mugleston since Ms. Mugleston began in the BRA RHA. TR. 753.

testified that Mr. Anderson told her that EG&G management had been trying to get him to call her at home and tape record the conversations. TR. 121.

According to Ms. Mugleston, Mr. Anderson indicated he refused EG&G's efforts. TR. 121-22. Ms. Mugleston testified that Mr. Anderson indicated he wanted to warn Ms. Mugleston that EG&G management was out to get her and wanted to nail her to the cross. TR. 122. According to Ms. Mugleston, Mr. Anderson told her that the Safety Department, Environmental Department, and management of other areas had been directed to have Ms. Mugleston record her workplace concerns in memos so that her concerns were documented and could be used against her. TR. 122. Ms. Mugleston testified that she has not had any subsequent conversations with Mr. Anderson because he informed her he did not want to talk to her any more. TR. 122. Instead, he would only waive to her and say hello. TR. 122. Ms. Mugleston testified that this was a big change in her friendship with Mr. Anderson compared to the past. TR. 122-23.

Mr. Anderson acknowledged that he had a conversation with Ms. Mugleston in the water bottle room after the hard hat incident. TR. 353. Mr. Anderson testified that he spoke to Ms. Mugleston because Ms. Mugleston had called his house several times, causing his wife to become concerned. TR. 353. Mr. Anderson wanted to know why she was calling. TR. 355. Mr. Anderson denied wanting to talk to Ms. Mugleston outside the view of other workers, explaining that the conversation took place in the water bottle room because Ms. Mugleston preferred to have a different setting and the water bottle room seemed like a neutral place. TR. 355-56. Mr. Anderson testified that Ms. Mugleston sought to assure him in the conversation that she did not have anything personal against him and that her dispute over the hard hat incident was not about him. TR. 353-54. Mr. Anderson testified that he told Ms. Mugleston that he wrote a statement for EG&G about the incident that was probably very damaging to Ms. Mugleston. TR. 354. Mr. Anderson testified that he and Ms. Mugleston were interrupted by another employee and that he did not recall much more of the meeting. TR. 354.

Mr. Anderson testified that he did not say anything to Ms. Mugleston regarding his desire, or lack thereof, to talk to her in the future. TR. 354-55. Mr. Anderson also testified that management has never asked him to call Ms. Mugleston or to tape record conversations with Ms. Mugleston. TR. 355. Mr. Anderson testified that he never told Ms. Mugleston or anyone else that management was after Ms. Mugleston, such as by nailing her to the cross or getting rid of her. TR. 357, 374. Mr. Anderson testified that he has not heard managers talking in any negative way about Ms. Mugleston and did not know what management's intent was regarding Ms. Mugleston. TR. 357, 371, 374.

3. EG&G's Refusal to Remove Hard Hat Reprimand

According to EG&G's disciplinary policy, disciplinary actions such as the hard hat reprimand are maintained in an employee's main personnel file for one year. TR.

1255-56, 1329-30. After one year, the disciplinary action is removed from the employee's main personnel file and placed in the employee's confidential file.²⁶ TR. 1255-56, 1329-30. An employee may not be considered internally for another job at EG&G if the employee has had a disciplinary action during the preceding 12 months, except in cases which implicate a business need. TR. 1248-49, 1325. After 12 months, the employee may apply for new positions, and managers are not allowed access to the disciplinary action. TR. 1256.

Ms. Mugleston testified that in late 2002 and early 2003, she wanted to apply for other positions at EG&G because of reorganization changes to the BRA RHA. TR. 143, 167. Ms. Mugleston testified that she requested in writing that her reprimand for the hard hat incident be removed from her personnel file, so that she could apply for other positions within the plant. TR. 142, 167. Ms. Mugleston cited in her request that another EG&G employee, Dennis Cook, had two reprimands in his personnel file but was still able to apply for a PAS operator opening. TR. 142. According to Ms. Mugleston, Ms. Sweeting responded that decisions to allow employees to apply for new positions are made on a case-by-case basis and that it was decided Ms. Mugleston's reprimand would remain in her file until the full year. TR. 143. Ms. Mugleston testified that she did not apply for any new positions because the reprimand remained in her file. TR. 143. Ms. Mugleston testified that although the hard hat incident has since been removed from her main personnel file, because the one year time period had passed, Ms. Mugleston was told that the hard hat reprimand was still available in the confidential file for future use against her. TR. 116.

Steve Land testified that he applied for the position of PAS operator two times recently. TR. 1945-46. According to Mr. Land, Dennis Cook received the job the first time. TR. 1946. Mr. Land testified that Dennis Cook had reprimands in his file at the time and that Mr. Cook was not yet PAS certified when Mr. Cook applied. TR. 634, 1947-48. According to Mr. Land, David Palmer was also offered the job over Mr. Land. TR. 1946. Mr. Land testified that David Palmer also was not PAS certified at the time

²⁶ Ms. Sweeting testified that based on a directive by James Colburn, the General Manager at the time, personnel information for an employee would be kept in two different files, a main personnel file and a confidential personnel file. TR. 449-54. The main personnel file consists of information managers may review, such as when the employee was hired, the employee's position, and the employee's performance appraisals. TR. 449-54. The confidential personnel file contains information that is personal to the employee, such as short term disability claims, insurance, and medical information. TR. 449-54. Managers are not allowed access to the confidential file. TR. 449-54.

Ms. Sweeting testified that documents were filed in this manner as a result of a charge from the DOL and complaints by Ms. Mugleston's attorney regarding certain documents in Ms. Mugleston's files. TR. 449-54. Ms. Sweeting testified that this filing change has been done with all employees, in addition to Ms. Mugleston. TR. 455. Ms. Sweeting testified that EG&G also keeps X files, investigatory files which contain records for incidents and violations at TOCDF. TR. 489. Ms. Sweeting testified that there is one X file per incident. TR. 489. Ms. Sweeting testified that X file documents are not accessible to EG&G managers unless permission is given by the General Manager. TR. 498.

Mr. Palmer applied. TR. 1956. Mr. Land was PAS certified when Mr. Land applied. TR. 1948. Mr. Land testified that he was an Unpack operator at the time while David Palmer and Dennis Cook were BRA RHA operators. TR. 1957. After failing to secure the first PAS opening, Mr. Land underwent another interview for a second PAS opening about one month later and was hired for that job. TR. 630.

Debbie Sweeting testified that she denied Ms. Mugleston's request to remove the hard hat reprimand because it was EG&G's practice to maintain a disciplinary action in an employee's main personnel file for one year. TR. 1250-51. Ms. Sweeting acknowledged that Dennis Cook was transferred from BRA RHA operator to PAS operator in 2002 despite the fact that he had a disciplinary action in his main file. TR. 1249. Ms. Sweeting explained that at the time of this PAS operator opening, EG&G was attempting to fulfill an Army directive, resulting from budget negotiations in September 2002, to lay off 12 BRA RHA employees. TR. 1239-41, 1249, 1982. Ms. Sweeting testified that EG&G sought to place the 12 employees in other positions rather than lay them off. TR. 1249, 1982. Ms. Sweeting testified that Dennis Cook was found to be a certified PAS operator. TR. 1249-50. Ms. Sweeting testified that Dennis Cook's transfer was approved by James Colburn, the General Manager at the time, based on the business need of preventing the layoff of BRA RHA operators. TR. 1249-50. Ms. Sweeting testified that the disciplinary actions in Dennis Cook's main file remained valid, despite the position transfer. TR. 1250.

Ms. Sweeting testified that although disciplinary actions are not completely discarded after one year, it is EG&G's practice that disciplinary actions past one year are not taken into account when considering future disciplinary action, including termination. TR. 1329-30. Ms. Sweeting testified that although disciplinary actions past one year technically may be considered in evaluating discipline for future violations, EG&G has never done so to her knowledge. TR. 1330, 1335-36.

4. EG&G's Refusal to Write Letter of Recommendation for Complainant

Ms. Mugleston testified that in April 2002, she sought a letter of recommendation from Cliff Shaw, the senior control room operator at the time. TR. 100, 162. According to Ms. Mugleston, Mr. Shaw indicated that she had done an excellent job and that he would have no problem writing a letter of recommendation for her. TR. 100. Ms. Mugleston testified that Mr. Shaw ultimately did not write this reference letter. TR. 101. According to Ms. Mugleston, Debbie Sweeting advised Mr. Shaw not to write the letter of recommendation. TR. 101.

Debbie Sweeting testified that Mr. Shaw called her and asked her about the company policy regarding writing reference letters. TR. 564. Ms. Sweeting testified that she did not know at the time the question was related to Ms. Mugleston. TR. 564. Ms. Sweeting testified that she gave Mr. Shaw the standard answer she gives to everyone.

TR. 564-65. Ms. Sweeting testified that she told Mr. Shaw that if the reference letter is for internal purposes and is based on a specific incident, in which the employee went above and beyond his/her duties, then it is encouraged that managers submit such reference letters to the employee's personnel file; if the reference letter is internal but is based only on general good work, then it is not encouraged; and if the reference letter is for non-EG&G employees, then it is company policy that those instances be referred to the HR department. TR. 564-65.

5. Complainant's Suspension from Keyholding List After Door 255 Incident

For surety purposes, some of the doors at TOCDF are secured with double locks, known as the "A" lock and the "B" lock. TR. 94, 424. In order to ensure that no one person has access to weapons of mass destruction or chemical agent, two CPRP individuals, one from the "A" list and one from the "B" list, are required to separately carry the keys that access these doors. TR. 94, 423-24. There are about 100 people on each of the two keyholding lists. TR. 423-24. In June 2002, there was an investigation of Ms. Mugleston and others related to a keyholding incident on June 14, 2002, at Door 255. TR. 93-94, 166, 413.

Ms. Mugleston testified that she and Jeff Utley were the key carriers the night of the Door 255 incident. TR. 94. They were called to unlock Door 255 for an entry. TR. 94. Ms. Mugleston testified that they arrived at Door 255, unlocked the door, and turned the door over to the two entrants, Scott Monsen and Dave Ericksen, who are CPRP certified employees. TR. 96-98. According to Ms. Mugleston, these individuals then became the *de facto* door guards until the arrival of the actual door guards, individuals who ensure that entry areas are secured while an entry is being conducted. TR. 96. After turning over the door over to the entrants, Ms. Mugleston and Mr. Utley left to go unlock another door to which they had been called. TR. 96. Ms. Mugleston testified that the entrants thereafter proceeded into the toxic area without waiting for their door guards. TR. 96. As a result, there was nobody guarding the door during the time of the entry to prevent unauthorized access into the toxic area. TR. 96. Scott Monsen²⁷ testified that there was a miscommunication about who the door guards were for the entry. TR. 638.

Ms. Mugleston testified that Steve Bracken, of the Environmental Department, noticed this discrepancy. TR. 96-97. After the entry was completed, Ms. Mugleston, Mr. Utley, and the entrants were called to the control room for a meeting with Steve Wallace. TR. 97. Steve Wallace asked them to write statements regarding the incident. TR. 97. Ms. Mugleston testified that she wrote a statement explaining exactly what happened. TR. 97. An investigation was thereafter performed, during which time Ms.

²⁷ Scott Monsen has been employed by EG&G for about 1½ years. TR. 637. He is currently is a DSA operator and formerly worked in the BRA RHA. TR. 636-37.

Mugleston was restricted from keyholding duties. TR. 97. Ms. Mugleston testified that she has still not received any report back regarding the investigation and that no one was ever written up for the incident. TR. 98, 641. Ms. Mugleston opined that the entrants who entered the toxic area without first waiting for their door guards to arrive should have been written up. TR. 98.

Ms. Mugleston testified that in June 2002, after the Door 255 incident, Tim Kutz told her and Mr. Utley that management was trying to pin the incident on them, despite the fact that they did nothing wrong with regard in to the incident. TR. 123-24. Ms. Mugleston testified that about one week later Tim Kutz again indicated to her that she did nothing wrong. TR. 125. Ms. Mugleston testified that Mr. Kutz approached her to ask for suggestions about how the keyholding procedure could be rewritten to make it less confusing. TR. 124-25.

Jeff Utley's account of the Door 255 incident was consistent with Ms. Mugleston's version. TR. 704-07. Mr. Utley likewise testified that Tim Kutz spoke with him and Ms. Mugleston within a week after the incident and commented that management was after him and Ms. Mugleston for the Door 255 incident. TR. 708-09. Mr. Utley testified that his keyholder duties were removed for almost a month because of the Door 255 incident. TR. 744.

With respect to the Door 255 incident, Tim Kutz testified that he was called and informed that a door had been left unsecured. TR. 408. Mr. Kutz in turn told the person who called him to remove the key holders, Jeff Utley and Ms. Mugleston, from the key lists until an investigation was completed. TR. 408-09. Mr. Kutz recalled that Ms. Mugleston and Mr. Utley were reinstated to the key lists the next time new key lists were formulated, but Mr. Kutz did not recall how long the two had been suspended. TR. 409, 415. Mr. Kutz testified that a report about the Door 255 incident was written, but he did not conduct the investigation and did not know whether the report was ever finalized. TR. 409. Mr. Kutz testified that the report may not have been finalized because the incident was overcome by another occurrence at TOCDF of greater importance or because the report had never gotten to the risk management board. TR. 413. Mr. Kutz testified that no one to his knowledge was ever disciplined or reprimanded because of this incident. TR. 413, 420. Both Tim Olinger and Steve Wallace did not anticipate any disciplinary action being taken against Ms. Mugleston for the Door 255 incident. TR. 1648-49, 1929-30.

Mr. Kutz testified that he never mentioned to Ms. Mugleston or Mr. Utley that management had a vendetta against them or was out to get them. TR. 414-16. Mr. Kutz also testified that he did not tell Ms. Mugleston that management was trying to pin the Door 255 incident on her. TR. 415. Mr. Kutz testified that he did not know the intentions of EG&G management in regard to Ms. Mugleston, Mr. Utley, and the Door 255 incident. TR. 414. Mr. Kutz testified that he did tell Ms. Mugleston and Mr. Utley

that if they were worried management was after them, then they would be fine if they adhered to the procedures because EG&G is a compliance driven company. TR. 414-16. Mr. Kutz testified that he told Ms. Mugleston that the keyholding procedures could be changed if they were not working. TR. 414-15. Mr. Kutz testified that he asked Ms. Mugleston and Mr. Utley for help correcting the keyholding procedure involved in the Door 255 incident, so that a similar door guarding incident would not happen again. TR. 417. Mr. Kutz testified that he made these comments during the same type of discussion that he had with other keyholders about understanding the procedure. TR. 417.

6. EG&G's Cancellation of Complainant's Utilities Cross-Training

Cross-training refers to an employee having the opportunity to receive training in an area other than his/her normal position. TR. 1671. A worker becomes "qualified" in an area after completing classroom training. TR. 1671. Once qualified in an area, a worker is allowed to independently perform simple tasks in the area and to work with a certified operator for significant tasks. TR. 1671. After becoming qualified, the worker undergoes hands-on training with a certified operator in order to complete a certification booklet. TR. 1671-72. Once the worker has completed the certification booklet, the worker is "certified" to perform the position, meaning the worker is able to operate the systems and perform the tasks of a regular operator. TR. 1671-72.

Ms. Mugleston and Mr. Utley testified that they had requested and received approval for Utilities cross-training in August or September 2002. TR. 92, 694-95. Ms. Mugleston and Mr. Utley testified that they received approval for this training from Coy Cole, the Training Manager, and from Burke Leatham, the Plant Shift Superintendent. TR. 92, 694-95. Ms. Mugleston and Mr. Utley testified that their lead, Scott Vonhatten, thereafter cancelled the Utilities training after he found out about it. TR. 92-93, 694, 1996. According to Ms. Mugleston and Mr. Utley, Scott Vonhatten yelled at them, saying that they were not allowed to schedule their own training without his prior approval. TR. 92-93, 694. Mr. Utley testified that Scott Vonhatten used foul language and was very derogatory when speaking to him and Ms. Mugleston about the Utilities training. TR. 694-95. According to Mr. Utley, Mr. Vonhatten also indicated that Mr. Utley and Ms. Mugleston would no longer be allowed to attend any type of training together. TR. 695. Ms. Mugleston testified that she requested the Utilities training prior to starting PAS training. TR. 2002.

Mr. Vonhatten testified that after he became lead over the BRA RHA in March 2002, he arranged for BRA RHA operators the opportunity to cross-train in the PAS. TR. 1672. Mr. Vonhatten testified that Tim Olinger had approved the PAS cross-training on the condition that it did not affect the BRA RHA operation and would not entail overtime. TR. 1676-77, 1712-13. Mr. Vonhatten testified that there was also some discussion about Utilities cross-training in the future, but with the caveat that such training would occur only after PAS certification was completed. TR. 1673.

According to David Palmer, Mr. Vonhatten allowed two or three people at a time to undergo the PAS training until they became certified. TR. 348-49. Mr. Vonhatten testified that Ms. Mugleston participated in the PAS training and completed the classroom portion of the training, as well as some hands-on training and portions of her certification booklet. TR. 1675-76. Mr. Vonhatten testified that he scheduled the PAS cross-training classes for Ms. Mugleston through Tim Olinger. TR. 1676-77. According to Mr. Vonhatten, Ms. Mugleston still must complete some knowledge and demonstration activities before she is certified in the PAS. TR. 1675-76.

Mr. Vonhatten testified that in mid-August 2002, he learned that Ms. Mugleston had signed herself up for Utilities cross-training. TR. 1677-79. Mr. Vonhatten testified that he learned this information when he called the Training Department to confirm the dates for the training path he had set up for the PAS cross-training. TR. 1678-79. Mr. Vonhatten testified that he was a little upset about Ms. Mugleston scheduling her own cross-training, because she was not supposed to do so. TR. 1680, 1711. Mr. Vonhatten testified that special training such as PAS or Utilities cross-training is supposed to be scheduled through him or management. TR. 1711. Mr. Vonhatten testified that in a heated discussion, he told Ms. Mugleston she was not to sign up herself up for the Utilities training and admonished her that PAS certifications would be completed prior to even looking into doing Utilities training. TR. 1709-10.

Mr. Vonhatten testified that only two BRA RHA operators have completed the PAS training, Dennis Cook and Scott Monsen. TR. 1680. Mr. Vonhatten testified that no other BRA RHA operators have attended Utilities training since he became lead. TR. 1681. Mr. Vonhatten testified that has allowed BRA RHA operators on their down time to visit the Utilities area to become familiar with its operation. TR. 1716-17. Mr. Vonhatten testified that he has not however allowed employees to do work towards their Utilities certification before finishing their PAS training. TR. 1716. Mr. Vonhatten testified that he would allow Ms. Mugleston and Mr. Utley to attend training together if it were scheduled and did not interfere with BRA RHA operations. TR. 1710-11. Mr. Vonhatten testified that Ms. Mugleston still has the opportunity to complete the PAS cross-training any time she is available. TR. 1703-04.

Tim Olinger testified that when he came to TOCDF in 2001 as Operations Manager, there were many workers who scheduled their own training, including trips to the east coast to the central demilitarization facility. TR. 1830. Mr. Olinger testified that in order to gain control of when and where workers would go for cross-training, he indicated to the Training Department that he would approve and control all cross-training. TR. 1830. Mr. Olinger testified that Ms. Mugleston's cross-training in Utilities was cancelled because she had signed up on her own before completing her PAS certification. TR. 1831. Mr. Olinger explained that he encourages cross-training, but

wants the cross-training to take place in a controlled manner and for workers to complete the certifications that go with that cross-training. TR. 1831.

7. Delay in Compensation for Missed Work due to Oregon Testimony

Ms. Mugleston asserted that she was not properly compensated by EG&G for a day of missed work in response to a subpoena she received for testimony in Oregon. TR. 127-29. Ms. Mugleston testified that she had requested the leave, but that the request was denied by her current Plant Shift Manager, Scott Sorenson. TR. 127-28. Ms. Mugleston testified that she insisted the leave should be covered according to the employee handbook, and Mr. Sorenson in turn called Debbie Sweeting to determine why Ms. Mugleston was not going to be paid. TR. 127-28. According to Ms. Mugleston, Ms. Sweeting responded that she was advised by Lois Baar, an attorney for EG&G, not to pay Ms. Mugleston. TR. 128. According to Ms. Mugleston, Ms. Sweeting indicated she would check into the situation for a resolution. TR. 128.

Debbie Sweeting testified that there was some hesitation in arranging for Ms. Mugleston to be paid for the Oregon testimony because Ms. Mugleston had not followed company policy by failing to submit the leave request and subpoena in advance of missing the work time. TR. 1254-55. Ms. Sweeting testified that Ms. Mugleston also failed to receive approval for the missed work in advance from her supervisor. TR. 1254-55. Ms. Sweeting testified that she nonetheless has arranged for Ms. Mugleston to be paid. TR. 1255.

8. Change in BRA RHA Duties

Scott Vonhatten, who had been the PAS and Utilities lead, also became the BRA RHA lead in about March 2002. TR. 110-11. Ms. Mugleston testified that Scott Vonhatten does not assign the same duties to her as he does with other members of her BRA RHA crew. TR. 115. Ms. Mugleston indicated that she has not been assigned keyholder duties and has not been called to perform DPE emergency backup entries. TR. 115. Ms. Mugleston testified that she would get additional pay for performing those duties. TR. 115.

Jeff Utley and Steve Land also testified that Ms. Mugleston's work assignments changed after Scott Vonhatten became the BRA RHA lead. TR. 594-95, 628, 724. Escorting refers to the use of a CPRP worker to escort into exclusion areas an individual without security clearance. TR. 1702. Mr. Utley, while conceding that escorting assignments have become more equally split among BRA RHA operators during the month before the hearing, testified that he and Ms. Mugleston had been continually sent to Battelle for escorting duties. TR. 724. Steve Land testified that after Scott Vonhatten became the lead over Ms. Mugleston and Mr. Utley, Mr. Vonhatten shifted Ms. Mugleston and Mr. Utley's workload from keyholding duties to monitoring duties, such

that Ms. Mugleston and Mr. Utley were assigned monitoring duties a greater percentage of the time compared to their BRA RHA crew members. TR. 628-29. Mr. Land also testified that Ms. Mugleston and Mr. Utley were required to escort for longer periods of time compared to their BRA RHA crew members. TR. 1949. Mr. Land explained that while other BRA RHA operators were relieved every two hours while escorting, Ms. Mugleston and Mr. Utley performed escorting duties without being relieved. TR. 1955.

Scott Vonhatten testified that he tries to be as fair as he can in his work assignments. TR. 1684. According to Mr. Vonhatten, Ms. Mugleston's work assignments have been no different than other BRA RHA operators. TR. 1684. Mr. Vonhatten testified that while the BRA RHA crew usually performs the keyholding duties, keyholding is also part of the duties of the PAS, Utilities, CHB, Unpack, and anyone else in the CPRP program. TR. 1682, 1720. Tim Kutz testified that no worker does only the job of keyholding. TR. 423.

According to Mr. Vonhatten, Ms. Mugleston performed keyholding duties about every other day for the first few months after he became the BRA RHA lead. TR. 1682. Mr. Vonhatten testified that the CHB thereafter volunteered to perform the keyholding duties. TR. 1682-83. Mr. Vonhatten explained that the CHB had little else to do while TOCDF was in a changeover period to VX operations and munitions were not being processed. TR. 424-26, 1682-83. Tim Kutz testified also that there was a lower demand generally for keyholders during the changeover period. TR. 424-26. Mr. Vonhatten testified that during agent operations, the CHB would probably revert back to its own duties and the BRA RHA would once again handle the keys. TR. 1720. Mr. Vonhatten testified that he simply uses Ms. Mugleston and Mr. Utley where he needs them, including as keyholders. TR. 1723.

With respect to DPE emergency backup entries, Mr. Vonhatten testified that he rarely receives a call requesting one of his operators for a backup entry. TR. 1683. Mr. Vonhatten testified that the DSA usually performs the back up entries. TR. 1684. According to Mr. Vonhatten, he has received only between 5 to 10 calls for back up entries involving the PAS or BRA RHA since he became the BRA RHA lead in March 2002. TR. 1684. Mr. Vonhatten testified that when he does receive a call, he tries to fill the request with someone with a good understanding of the entry involved. TR. 1684. For example, Mr. Vonhatten would use a PAS operator if the entry involved the PAS and a BRA RHA operator when the requested entry involves the BRA RHA. TR. 1684.

With respect to escort assignments, Mr. Vonhatten testified that Ms. Mugleston is one of many workers he uses for escorting. TR. 1702. While PAS and Utilities operators are also used for escorting duties, Mr. Vonhatten has assigned escorting duties to BRA RHA operators more than PAS or Utilities operators. TR. 1703. Mr. Vonhatten explained that the workload of BRA RHA operators has decreased during TOCDF's changeover period, while the workload of PAS and Utilities operators stays generally the

same whether TOCDF is processing agent or not. TR. 1724. Among the BRA RHA operators, Mr. Vonhatten has tried to evenly rotate the escorting duties. TR. 1703. Mr. Vonhatten testified that Ms. Mugleston and Mr. Utley did do more escorting for a time, because they were covering for other BRA RHA operators who were attending PAS cross-training. TR. 1703. Mr. Vonhatten testified that other BRA RHA operators likewise were used more for escorting during the times Mr. Utley and Ms. Mugleston attended PAS cross-training. TR. 1703. Mr. Vonhatten believed that he has used Ms. Mugleston for escorting about the same overall as other BRA RHA operators. TR. 1703.

9. Failure to Provide Shift Turnover

Ms. Mugleston also asserted that Scott Vonhatten treated her unfairly with respect to shift turnover. Shift turnover refers to information that is passed on from one shift to the next shift regarding the events of the prior shift, such as the status of tasks, safety concerns, and potential dangers. TR. 80, 109-10, 627, 1669. This information is shared by the leads who in turn inform their workers of the pertinent happenings. TR. 627, 1669-70. According to Ms. Mugleston, Mr. Vonhatten has failed on occasion to provide her with shift turnover information. TR. 110. Ms. Mugleston testified that Mr. Vonhatten would sometimes provide shift turnover information to the other members of her BRA RHA crew, while she was sent to perform escort duties off-facility at Battelle. TR. 111. Ms. Mugleston testified she entered a restricted area on one occasion without proper protection because she was not notified through shift turnover information that an area had been downgraded from Category "C" to Category "B." TR. 111.

Scott Vonhatten explained that a worker may occasionally miss shift turnover information if the worker is not present due to off-facility escorting assignments. TR. 1670. Mr. Vonhatten testified that in these cases the worker will be informed of any information pertinent to the worker. TR. 1670. Mr. Vonhatten did not recall Ms. Mugleston, at any time after he became the BRA RHA lead, entering a Level "B" area that had been downgraded from a Level "C" area. TR. 1670. Mr. Vonhatten, as well as Jeff Utley, Tonya Elkington, and Tim Olinger, testified that door guards are posted to control access to an area that is downgraded from Category "C" to Category "B." TR. 1409, 1670, 1835, 1974-75. Ms. Mugleston testified that there were no door guards or signs posted when she entered the Category "B" area. TR. 2012.

10. Denial of Merit Raise

Ms. Mugleston also contends that she was improperly denied a merit raise when she was rehired as a BRA RHA operator in October 1999, after her lay-off. TR. 99-100. Ms. Mugleston testified that she was rehired at the time merit increases were awarded, but that she was not given a merit increase. TR. 99-100. Ms. Mugleston testified that one usually receives a merit increase within six months after being re-hired. TR. 99-100. When Ms. Mugleston found out that Scott Monsen had received a merit increase almost a

year after his hiring period, she felt she was entitled also to a merit increase. TR. 100. Ms. Mugleston therefore requested in October 2001 that she be awarded a retroactive merit increase. TR. 1212-13.

Debbie Sweeting testified that employees may receive merit increases on October 1st of any year. TR. 550. Ms. Sweeting testified that, based on EG&G's agreement with the United States government, no employee is allowed to get a pay raise within six months of the October 1st merit increase. TR. 551. Any employee receiving a raise between April 1st and October 1st therefore is not eligible for the merit increase in October. TR. 551. Ms. Sweeting testified that an exception is made, however, for employees who are hired between April 1st and October 1st; these employees are eligible to receive a prorated merit increase six months after being hired. TR. 551. Scott Monsen testified that during his 1½ years at EG&G, he has received two pay raises, one after six months and another after one year. TR. 643. Mr. Monsen testified that his six month raise was retroactive and that he received a yearly raise shortly afterward. TR. 644-45. Ms. Sweeting testified that Scott Monsen never received a merit pay increase in an untimely manner. TR. 550. Ms. Sweeting testified that any raises Mr. Monsen received would have been given at times that are allowed within EG&G's compensation management plan. TR. 550.

In denying Ms. Mugleston's request for the merit increase, Ms. Sweeting examined the handling of merit increases for everyone else laid off at the same time as Ms. Mugleston. TR. 552, 1216. Ms. Sweeting testified that 12 to 15 other workers were rehired like Ms. Mugleston and that none of those workers were eligible for a merit raise until the following year. TR. 552, 1216. Ms. Sweeting testified that awarding Ms. Mugleston a retroactive merit raise would be inconsistent with EG&G's treatment of the other workers in Ms. Mugleston's situation. TR. 552, 1216. Ms. Sweeting pointed out that Ms. Mugleston was rehired at the same wage that Ms. Mugleston left with, which was already in the high end for the salary of a BRA RHA operator. TR. 1216. Ms. Sweeting testified that she denied Ms. Mugleston's request for the merit increase after consulting Bob Rudisin, EG&G's Vice-President of HR and Ms. Sweeting's boss. TR. 551-52. Ms. Sweeting testified that she spoke with Mr. Rudisin because Ms. Mugleston's request was unusual, occurring two years after the merit increase in question. TR. 552. Ms. Sweeting also consulted Stuart Young. TR. 555-56.

Ms. Sweeting testified that she reported back to Ms. Mugleston about the merit raise issue on November 27, 2001. TR. 1220. Ms. Sweeting told Ms. Mugleston off the record during this meeting that Ms. Mugleston should not press the merit raise issue. TR. 153-54, 556. Ms. Sweeting testified that she was trying to advise Ms. Mugleston that Ms. Mugleston should not make such a big deal out of an issue that Ms. Mugleston could not win. TR. 556-57. Ms. Sweeting explained that Ms. Sweeting had done everything she could to justify a retroactive merit increase for Ms. Mugleston, but Ms. Sweeting could not justify it. TR. 556-57. Ms. Sweeting testified that she was proud of the fact that Ms.

Mugleston had done so well for herself since Ms. Mugleston's workplace problems that led to her 1998 settlement. TR. 557-58. Ms. Sweeting testified that she advised Ms. Mugleston not to press the merit raise issue because Ms. Sweeting was concerned that continuing to pursue the merit increase issue would draw negative attention to Ms. Mugleston. TR. 153-54, 558. Ms. Sweeting testified that she was concerned for Ms. Mugleston because continuing to pursue the merit raise issue might cause workers to once again ridicule Ms. Mugleston about her prior workplace problems. TR. 558-59.

A. Hostile Work Environment

1. Complainant Called a "Whistleblower" by Debbie Sweeting

Ms. Mugleston testified that Debbie Sweeting on one occasion indicated to Ms. Mugleston that Ms. Mugleston had to speak with the company attorney, because all "whistleblowers" needed to speak with the company attorney. TR. 85. Bobbie Earp testified also that she has heard Ms. Mugleston referred to as a "whistleblower," but Ms. Earp could not recall who said it. TR. 794. Jeff Utley testified that David Palmer told him that Debbie Sweeting had called Ms. Mugleston a "whistleblower." TR. 739. According to Mr. Utley, David Palmer reported that he witnessed Ms. Sweeting during a meeting tell Ms. Mugleston that all "whistleblowers" have to speak to the company attorneys. TR. 739-40. Contrary to Mr. Utley's testimony, Mr. Palmer testified that Mr. Palmer was only told by Ms. Mugleston that Debbie Sweeting had called Ms. Mugleston a "whistleblower," but Mr. Palmer did not himself hear such a remark. TR. 335-36.

Debbie Sweeting testified that other than saying "whistleblower complaint," she did not recall using the term "whistleblower" in her conversations with Ms. Mugleston. TR. 547-48. Ms. Sweeting testified that she did advise Ms. Mugleston to talk to EG&G's corporate attorney, Stuart Young. TR. 549. Ms. Sweeting explained that she advises many employees who are considering outside counsel for complaints against EG&G to work through EG&G's process first, in order to determine if the problem can be resolved internally without the employee undergoing unnecessary expenses. TR. 549-50. Ms. Sweeting testified that she wants employees to know there is an in-house avenue they can take for such complaints. TR. 549. Ms. Sweeting testified that she has never told any employee, including Ms. Mugleston, that the employee must first consult EG&G's company attorney before seeking help outside the company. TR. 550.

2. Management Was Advised Not to Speak with Complainant

Ms. Mugleston testified that during a meeting after November 27, 2001, Ms. Sweeting told Ms. Mugleston that Ms. Sweeting and Tim Olinger had been advised by EG&G's attorneys, Stuart Young and Lois Baar, not to speak with Ms. Mugleston any longer regarding Ms. Mugleston's environmental and safety concerns. TR. 154-55. Ms. Mugleston testified that after about one month, Ms. Mugleston received a phone call

from Debbie Sweeting indicating that Ms. Sweeting and Mr. Olinger could again speak with Ms. Mugleston, as EG&G's attorney had given them permission to do so after dotting all the "i's" and crossing all the "t's." TR. 155.

Ms. Sweeting acknowledged that at some point she was advised by the company attorney, Stuart Young, that she should not be making deals or talking about specific instances with Ms. Mugleston. TR. 561. According to Ms. Sweeting, she was told that because Ms. Mugleston had gotten representation through an attorney, Ms. Mugleston would have to communicate through her attorney to the company attorney. TR. 561. Tim Olinger did not recall any restrictions being placed on him at any time regarding speaking to Ms. Mugleston, including being advised by the company attorney that he should not be talking with Ms. Mugleston. TR. 1911.

3. Disregard for Complainant's Settlement by Tim Olinger

Ms. Mugleston testified that at some point after writing her safety and environmental memos, Ms. Mugleston spoke with Tim Olinger about her settlement. TR. 126. According to Ms. Mugleston, she told Tim Olinger that she felt unfairly treated and retaliated against in violation of her settlement. TR. 126. Ms. Mugleston testified that Mr. Olinger told her he did not care about her settlement, that her settlement did not involve him, and that he did not want to hear about her settlement. TR. 126-27. Ms. Mugleston testified that Mr. Olinger's exact words were, "I don't give a sh--." TR. 127.

Tim Olinger acknowledged that he did indicate to Ms. Mugleston that her previous settlement did not really matter to him. TR. 1833-34. Mr. Olinger explained that he does not expect anything different from Ms. Mugleston than he would from any other employee. TR. 1834. Mr. Olinger testified that he was not going to treat Ms. Mugleston any differently than he would any other employee. TR. 1834. Mr. Olinger testified that he has never read Ms. Mugleston's settlement agreement, that he did not have any idea what her settlement was about, and that no one ever communicated to him even the general notion that the settlement involved EG&G and Ms. Mugleston agreeing to treat each other as if they had a clean slate. TR. 1906.

4. January 2002 Meeting With Management

In January 2002, Ms. Mugleston attended a meeting with Tim Olinger, Jimmy Clark, and Debbie Sweeting to discuss Ms. Mugleston's October 2001 safety and environmental concerns. TR. 82, 1221, 1829. Ms. Mugleston testified that she did not want to attend the meeting because EG&G attorney Stuart Young was on speakerphone and because Ms. Mugleston did not have her own representation. TR. 83-84. Ms. Mugleston was keyholding at the time she was called to the meeting. TR. 83-84. Ms. Mugleston testified that she informed Steve Wallace that she did not want to attend the meeting. TR. 83. According to Ms. Mugleston, Steve Wallace indicated to her that it would be insubordination if she did not turn in her keys and attend the meeting. TR. 83. Ms. Mugleston testified that she ultimately turned in her keys and attended the meeting, but took along David Palmer as a witness. TR. 83.

Ms. Mugleston testified that upon arriving at the meeting she indicated that she was not comfortable participating in the meeting without representation. TR. 83-84. According to Ms. Mugleston, Tim Olinger, Jimmy Clark, and Debbie Sweeting then consulted Stuart Young regarding Ms. Mugleston's discomfort with participating in the meeting. TR. 84. Ms. Mugleston testified that after a few minutes, Ms. Mugleston and Mr. Palmer were asked to step out of the room while the EG&G officials talked to Stuart Young. TR. 84. Ms. Mugleston testified that when she came back into the room, the conversation with Mr. Young had ended and everyone went ahead with the meeting. TR.

84. Ms. Mugleston testified that at some points during the meeting, Mr. Young was present via speakerphone. TR. 84.

The January 2002 meeting was the first of two meetings David Palmer attended as a witness for Ms. Mugleston.²⁸ TR. 328-333. Mr. Palmer testified that Ms. Mugleston was reluctant to attend the meeting because she had been advised by her attorney not to go. TR. 336. Mr. Palmer testified that Ms. Mugleston was nevertheless ordered by Steve Wallace to attend the meeting. TR. 331. Mr. Palmer testified that Tim Olinger, Jimmy Clark, and Debbie Sweeting were fine with him witnessing the meeting. TR. 329.

With respect to the January 2002 meeting, Steve Wallace testified that he received a call from Debbie Sweeting informing him that Ms. Mugleston was required at the meeting. TR. 1612-13, 1637-38. In response to the telephone call, Mr. Wallace directed Erv Hillman to notify Ms. Mugleston that Ms. Mugleston was required at the meeting. TR. 1613. Mr. Wallace testified that Erv Hillman reported back that Ms. Mugleston did not want to go the meeting because Ms. Mugleston was keyholding at the time and because her lawyer told her that she did not have to go. TR. 1613-14, 1633. Mr. Wallace testified that he told Erv Hillman that Ms. Mugleston needed to turn in her keys and that Ms. Mugleston did not have a choice about whether or not to attend the meeting. TR. 1615. Mr. Wallace explained that as Plant Shift Manager, he had discretion over who has access to the keys, as the keys are a surety concern. TR. 1615.

According to Mr. Wallace, Ms. Mugleston thereafter proceeded to the control room. TR. 1615, 1634. Mr. Wallace testified that he never asked Ms. Mugleston for an explanation as to why she would not turn in her keys immediately. TR. 1634. Mr. Wallace testified that Ms. Mugleston did attempt to provide him an explanation, but he demanded the keys without waiting for her explanation. TR. 1615-16, 1634-35. Mr. Wallace testified that during the ensuing heated discussion, he did use the term “insubordination,” after Ms. Mugleston refused a specific directive to turn in her keys immediately. TR. 1635. Mr. Wallace testified that he ultimately forcefully directed that Ms. Mugleston would turn in the keys and that she did not have a choice in the matter. TR. 1616. Mr. Wallace testified that Ms. Mugleston then turned in her keys and left the control room. TR. 1616, 1635. After Ms. Mugleston left, Mr. Wallace called her back to ensure that Ms. Mugleston understood that she was to attend the meeting. TR. 1635-36. Mr. Wallace testified that when she returned, Ms. Mugleston appeared to have been crying. TR. 1636. Mr. Wallace then clarified that she was to attend the meeting. TR. 1636.

²⁸ Mr. Palmer also attended the meeting in which Ms. Mugleston was given her hard hat reprimand. TR. 344-45.

Debbie Sweeting testified that Steve Wallace called her when Ms. Mugleston initially refused to attend the meeting. TR. 1221-22. Ms. Sweeting testified that she directed Mr. Wallace to send Ms. Mugleston to the meeting so that Ms. Sweeting could personally talk to Ms. Mugleston about Ms. Mugleston's discomfort. TR. 1221-22. Tim Olinger and Debbie Sweeting acknowledged that Ms. Mugleston initially did not want to participate in the meeting without representation. TR. 543, 547-49, 1828-29. Ms. Sweeting and Mr. Olinger testified that the EG&G officials therefore called Stuart Young on speakerphone to have him explain to Ms. Mugleston that the meeting was being held only to answer the October 2001 issues she had raised. TR. 543-44, 1829-30, 1901. Ms. Sweeting testified that Stuart Young explained that the meeting could be rescheduled if Ms. Mugleston wanted to have representation present. TR. 544. Ms. Sweeting and Tim Olinger testified that after being explained that the meeting was being held only to answer her safety and environmental concerns, Ms. Mugleston did not have a problem with proceeding with the meeting. TR. 544, 1829.

Ms. Sweeting testified that Stuart Young did not participate in the meeting itself and that EG&G never at any time intended for Mr. Young to be a part of the meeting. TR. 544-45. Ms. Sweeting explained that Stuart Young as the company attorney had himself indicated that he should not be talking with Ms. Mugleston. TR. 544. Ms. Sweeting testified that the managers did excuse Ms. Mugleston and David Palmer at one point to call Mr. Young about a question. TR. 545-46. Ms. Sweeting did not remember the question. TR. 545-46. Ms. Mugleston and Dave Palmer were then invited back into the room. TR. 546.

5. Complainant Closely Watched by Steve Wallace

Due to insufficient space, BRA RHA operators became stationed in the lunch room. TR. 105, 654. Ms. Mugleston testified that Steve Wallace on several occasions would come into the lunch room and check on what the BRA RHA operators were doing. TR. 105. Ms. Mugleston testified that Mr. Wallace would also sneak up on workers to make sure they were not sleeping or otherwise behaving improperly. TR. 105. Jeff Utley likewise testified that Steve Wallace wanted to know where Mr. Utley and Mr. Mugleston were at all times and that Steve Wallace used to sneak around following them. TR. 725-26. Mr. Utley testified that Steve Wallace at one time accused Mr. Utley of reading a book. TR. 726. According to Mr. Utley however, Mr. Utley had only an OSHA manual and was not reading it. TR. 726-27.

Ms. Mugleston testified also that about six or eight months before the hearing, Mr. Wallace received outside personnel, including company attorneys and EG&G's overall Plant Manager, Dale Orbin. TR. 105-06. According to Ms. Mugleston, Mr. Wallace gave these officials a tour of TOCDF. TR. 105-06. Ms. Mugleston testified that during this tour, Mr. Wallace pointed out Ms. Mugleston while he talked to the

officials, causing Ms. Mugleston to infer that Mr. Wallace was singling her out and talking about her. TR. 105-06.

Steve Wallace testified that he has never said anything negative about Ms. Mugleston relating to her raising safety and environmental concerns. TR. 1624-26. Debbie Sweeting testified that EG&G underwent an inspection and audit by the Army Inspector General (IG) in the last quarter of 2001. TR. 1235-36. Ms. Sweeting testified that as a result of the inspection, the IG's office recommended eliminating the BRA RHA lead, placing the BRA RHA under an Operations Supervisor for more supervision, and closing off the BRA area to employees because the area was not in operation and had become a place where employees would hang out, read, or sleep. TR. 1236-39. The IG's recommendations were adopted by PMCD. TR. 1312-13. Ms. Sweeting testified that as a result of these recommendations, James Colburn, EG&G's General Manager at the time, issued a directive for EG&G management to become more strict about ensuring that workers were staying busy and not hanging around, sleeping, or reading on the job. TR. 1241, 1317-18. Ms. Sweeting cited several disciplinary citations that resulted from the heightened scrutiny from supervisors, including the June 13, 2002 and October 29, 2002 suspensions of Phil Clements and Calvin Cook, respectively, for sleeping on the job. TR. 1242-43; RX-13.

6. Steve Wallace Reacting Onerously When Asked About a Procedure

Ms. Mugleston testified that Steve Wallace spoke about a procedure during a meeting in the fall of 2002. TR. 150. Ms. Mugleston asked Mr. Wallace at the meeting what PRP the procedure was specifically listed under, so that the workers could look up the procedure themselves. TR. 150. Ms. Mugleston testified that Mr. Wallace reacted in an onerous way, calling her into his office after the meeting and informing her that he did not appreciate being put on the spot in front of the other employees. TR. 150. According to Ms. Mugleston, Mr. Wallace indicated that Ms. Mugleston should in the future ask him questions about procedure, safety, or environmental issues in his office and not in front of all the other workers. TR. 150.

7. Steve Wallace Reacting Angrily After XRF Room Incident

In late 2001 or early 2002, an incident occurred involving a planned entry into the XRF room, an x-ray room where mercury ton containers are sampled and x-rayed. TR. 157, 681, 1617-18. Ms. Mugleston and Mr. Utley were door guarding for the entry at the time. TR. 682. According to Ms. Mugleston and Mr. Utley, employees were pushed in on the entry without being properly prepared. TR. 157, 682-83. Ms. Mugleston and Mr. Utley testified that the employees were not briefed about the entry by management and did not have a pre-entry meeting about the entry procedure. TR. 157, 682-83. Ms. Mugleston and Mr. Utley testified that the entrants were uncomfortable with performing the entry given the entrants' lack of preparation. TR. 157, 684.

In turn, Ms. Mugleston and Mr. Utley informed Steve Wallace about the situation, and Mr. Wallace came to the XRF room. TR. 157, 684-85. Mr. Utley testified that Mr. Wallace was upset about Mr. Utley and Ms. Mugleston's intervention. TR. 686. According to Ms. Mugleston, Mr. Wallace argued with her and told her that the entrants did not need counseling or clarification about the entry, but instead needed to just go in and do their job. TR. 157. Ms. Mugleston testified that she explained to Mr. Wallace that the entrants were very upset and were scared to perform the entry because of the lack of preparation. TR. 157-58. Ms. Mugleston testified that Mr. Wallace became furious with her and started yelling at her. TR. 158. In the end, Mr. Wallace contacted Tim Olinger, and the entry was called off. TR. 158, 686-87.

Mr. Wallace testified that EG&G was in the process of preparing the XRF room for actual usage. TR. 1617. Mr. Wallace testified that there was an informal meeting about the XRF entry. TR. 1617. Mr. Wallace explained that formal procedures for entries into the XRF room were not yet written, because there was not yet an understanding of what to expect during the entries. TR. 1617. Mr. Wallace testified that he proceeded immediately to the XRF room when he received word that there was an issue with the entry. TR. 1617. Mr. Wallace testified that when he arrived, Ms. Mugleston and several other people were present. TR. 1619. According to Mr. Wallace, he tried to get clarification from Ms. Mugleston about the dispute, as he believed the pre-entry preparation requirements had been met. TR. 1619-20. Mr. Wallace testified that Ms. Mugleston indicated she was concerned that no pre-entry meeting had taken place. TR. 1619. Mr. Wallace testified that he did not necessarily agree with Ms. Mugleston's position, but that she raised enough of an issue in his mind that he felt the entry needed to be delayed until more information could be gathered. TR. 1621. Mr. Wallace testified that he was frustrated with the incident. TR. 1622. According to Mr. Wallace, this frustration did not lie with Ms. Mugleston, but instead with the fact that all the preparation and resources put into the entry became wasted. TR. 1622. Mr. Wallace testified that he believed the entry was performed later that shift. TR. 1623.

8. Scott Vonhatten Reacting Angrily After Barricade Tape Incident

Ms. Mugleston asserted that she was treated unfairly during an incident involving barricade tape in August 2002. TR. 106, 167. At the time of this incident, Ms. Mugleston and Mr. Utley were loading brine into tankers. TR. 107, 691-92. According to Ms. Mugleston and Mr. Utley, they flagged off area around the tankers with caution tape, as they were required to do procedurally. TR. 107, 691-93. The barricade tape was thereafter broken when laborers intentionally drove through the barricade tape as a joke. TR. 107, 691-93. Scott Vonhatten was notified by the control room that the barricade tape was down, and Mr. Vonhatten sent Gary Boswell to inform Ms. Mugleston and Mr. Utley that they needed to put the tape back up in compliance with procedures. TR. 692, 1685-86, 1693-94. Mr. Vonhatten testified that he sent Mr. Boswell because Mr. Boswell

was already on his way out at the time. TR. 1694-95. According to Mr. Vonhatten, Gary Boswell reported back to him that Mr. Utley and Ms. Mugleston refused to put the tape back up and that Mr. Boswell himself had to replace the tape. TR. 1686, 1690.

Ms. Mugleston testified that she and Mr. Utley were looking for more barricade tape to put back up when Gary Boswell arrived. TR. 107. Ms. Mugleston testified that she and Mr. Utley could not find any more barricade tape at the site, but that Mr. Boswell had brought another roll with him. TR. 107-08. According to Ms. Mugleston, she and Mr. Utley then put the barricade tape back up. TR. 107-08. Ms. Mugleston testified that she never refused to put up the barricade tape. TR. 2009.

Jeff Utley testified that he first became aware the barricade tape was down when Mr. Boswell brought it to his attention. TR. 692, 1965. According to Mr. Utley, this prompted Mr. Utley to question Mr. Boswell about why it was necessary for Mr. Vonhatten to send a messenger to give notice about the tape instead of simply calling by phone or radio. TR. 692, 1965. As with Ms. Mugleston, Mr. Utley testified that neither he nor Ms. Mugleston refused to put the tape back up. TR. 1965-66. Mr. Utley testified that they instead helped Mr. Boswell put the tape back up. TR. 1965-66.

Ms. Mugleston and Mr. Utley testified that they were confronted by Mr. Vonhatten after they finished pumping the brine. TR. 108, 692-93. According to Ms. Mugleston, Mr. Vonhatten yelled at her that she needed to follow the barricade tape procedures and to do what Mr. Vonhatten tells her to do. TR. 108. Ms. Mugleston testified that Mr. Vonhatten talked down to her and did not let her explain what happened with the barricade tape. TR. 108. Ms. Mugleston testified that when she finally was able to tell Mr. Vonhatten that the barricade tape was snapped intentionally by laborers, Mr. Vonhatten was furious and stormed off. TR. 108-09. Ms. Mugleston was not disciplined for the barricade tape incident. TR. 109. Mr. Utley testified that during the confrontation with Mr. Vonhatten, Mr. Vonhatten used foul language and was screaming furiously at him and Ms. Mugleston about following procedures. TR. 692-93.

Mr. Vonhatten testified that he went out to meet Ms. Mugleston and Mr. Utley after he was informed by Gary Boswell that Ms. Mugleston and Mr. Utley had refused to replace the barricade tape. TR. 1686. Mr. Vonhatten testified that the three of them then had a heated discussion. TR. 1687. Mr. Vonhatten testified that he asked why Ms. Mugleston and Mr. Utley were not following barricade tape procedures and why they had not called him to report a problem at the site, in violation of another workplace procedure. TR. 1687. Mr. Vonhatten testified that Mr. Utley and Ms. Mugleston provided explanations he did not agree with and the argument escalated. TR. 1692. Mr. Vonhatten testified that he understood from Ms. Mugleston and Mr. Utley that a maintenance laborer drove through the barricade tape. TR. 1692. Mr. Vonhatten opined that he nevertheless should have been notified that the tape was down, as the incident was an abnormal upset condition in the work area. TR. 1692-93. Mr. Vonhatten conceded

that he did not know exactly how long the tape had been down before he sent Mr. Boswell to the site. TR. 1694-95. Mr. Vonhatten also acknowledged that he used vulgar language during the argument. TR. 1687-90. Mr. Vonhatten believed that Ms. Mugleston and Mr. Utley both also used vulgar language, although he conceded it was hard to tell because everyone was talking at the same time. TR. 1687-90.

Mr. Vonhatten testified that he contacted the Maintenance Manager afterward about Mr. Utley and Ms. Mugleston's version of events and was told that a maintenance worker drove through the barricade tape. TR. 1693. Mr. Vonhatten testified that the Maintenance Manager indicated to Mr. Vonhatten that action would be taken regarding the laborers involved. TR. 1693. Mr. Vonhatten testified that the barricade tape issue did not arise again after that day. TR. 1687-88.

9. Ethics Training by EG&G Attorneys

In July 2002, EG&G conducted workplace training about ethics and whistleblowing in response to Ms. Mugleston's March 2002 DOL complaint. TR. 143-44, 166, 1156, 1163. Ms. Mugleston's training class, which consisted of 15 to 20 employees, was conducted by Jathan Janove, an assistant attorney for EG&G. TR. 144. Ms. Mugleston explained that during this ethics training, Mr. Janove set forth several scenarios in which whistleblowers had raised concerns to management. TR. 144. According to Ms. Mugleston, Mr. Janove then asked the employees to raise their hands to indicate whether they would side with the whistleblower or the employer. TR. 144. Ms. Mugleston testified that in the end, Mr. Janove indicated that management would have won in those scenarios. TR. 144. Ms. Mugleston testified that she left the training session with the impression that Mr. Janove was talking about Ms. Mugleston's concerns to management. TR. 145. Ms. Mugleston opined that Mr. Janove's training was like a poll to determine how many employees would side with management and how many employees would side with the whistleblower. TR. 145.

Jeff Utley, Steve Land, and Andy Harris all likewise had the impression that the ethics training referred to Ms. Mugleston's situation. TR. 593-94, 741-42, 829. Mr. Utley attended a training session presented by Mr. Janove, while Steve Land and Andy Harris attended a session presented by Lois Baar. TR. 592, 740, 828. All three witnesses testified that employees in their respective sessions were polled regarding whistleblower scenarios. TR. 593, 741-42, 829. In addition, all three witnesses opined that EG&G was taking a poll to determine who would back EG&G and who would back Ms. Mugleston with respect to her dispute. TR. 593-94, 741-42, 829. Andy Harris opined that the message of the training was that one should not be a whistleblower. TR. 829.

Debbie Sweeting testified that the ethics training was conducted because EG&G wanted to ensure that employees knew safety and environmental issues should be reported and the avenues in which to do so and because it had been a year and a half since that type of training was given. TR. 1252-53. Lois Baar testified that the goal of the ethics training was to encourage employees to raise safety and environmental issues, to ensure that employees were aware of their rights and the different channels for reporting these issues, to ensure that employees understood Ms. Mugleston's March 2002 DOL complaint was a legitimate thing to do, to discuss the meaning and dynamics of retaliation, to encourage the reporting of any retaliation, and to discourage behavior that could be considered retaliation. TR. 1159, 1163-64.

Ms. Baar testified that she performs employment law training on a regular basis, covering such topics as sexual harassment, performance appraisals, survey training for managers, and the Americans with Disabilities Act. TR. 1157. Ms. Baar testified that she and her partner, Jathan Janove, each conducted about 10 sessions of the ethics training, with about 20 employees per training session. TR. 1156-57. The sessions were one hour long. TR. 1157. Ms. Baar testified that each session involved a discussion of the protections for employees who raise safety or environmental issues. TR. 1162. Ms. Baar testified that interactive exercises were used in the sessions, in which the trainees were presented with a hypothetical and divided into two groups. TR. 1162. Each group then was to discuss the scenario and formulate an opinion about the situation. TR. 1162. Ms. Baar testified that the trainees were not being asked to choose sides between management and the whistleblowing employees. TR. 1164. Ms. Baar testified that although it was not the intent, the interactive exercises may have given rise to discussions about who in each scenario was doing the proper thing or what the proper action should be. TR. 1164.

10. BRA RHA Reclassification

Ms. Mugleston raised a concern in her October 2001 and February 2002 memos about the possible reclassification of the BRA RHA operator position under the Service Contract Act, which requires federal contractors to abide by certain wage minimums and benefits. TR. 237-38, 283-84, 1213; RX-1; RX-37. The Service Contract Act contains brief job descriptions that must be matched generally to the employment positions at EG&G, such as a BRA RHA operator. TR. 1213-14. The matches are submitted to the United States government for recommendations and approval. TR. 1214. After the matches have been approved, the federal contractor is required to pay the employee the minimum of the position to which the employee's job is matched. TR. 1213-15. Ms. Mugleston was concerned that the BRA RHA position would be underrated for compensation purposes in terms of its classification. TR. 233-34, 241. There have been no changes to the classification of BRA RHA operators as of yet. TR. 239, 1270.

Ms. Sweeting testified that Ms. Mugleston thought the BRA RHA position should be classified under the category of “Hazardous Waste Technician” in the Service Contract Act while EG&G managers thought the BRA RHA position should be classified under the category of “Material Handler.” TR. 1267-68. Ms. Sweeting testified that the Hazardous Waste Technician classification pays more than the Material Handler classification. TR. 1268. Ms. Mugleston opined that the “Material Handler” classification would be degrading to BRA RHA operators. TR. 240. Ms. Sweeting testified that a change in classification of the BRA RHA operator position would be initiated by Ms. Sweeting and would entail approval from EG&G’s General Manager, EG&G’s Corporate Office, and the United States government. TR. 1270.

Ms. Sweeting testified that the BRA RHA operator classification issue was reviewed for about six months. TR. 1217. Ms. Sweeting ultimately referred the BRA RHA operator classification issue to an outside attorney hired by EG&G, whose expertise was the Service Contract Act. TR. 1217, 1269. This attorney evaluated the issue and recommended that BRA RHA operators be classified under a position that was \$5.00/hour lower in salary than the salary of a BRA RHA operator. TR. 1217. Ms. Sweeting testified that EG&G therefore held off on making a change. TR. 1217.

11. Negative Comments and Sentiments

a. Steve Wallace Commenting About Complainant’s Safety and Environmental Concerns

EG&G’s work force is divided into four teams, with each team working 14 12-hour shifts out of a 28-day cycle. TR. 1606-08. Steve Wallace testified that during a 14-day cycle, he would physically see Ms. Mugleston about seven days, quite often in the control room when she went to pick up keys for keyholding. TR. 1610-11. Mr. Wallace testified that during a 14-day cycle, he would have a meaningful conversation with Ms. Mugleston, aside from merely saying hello, about three times. TR. 1611-12. Mr. Wallace testified that he likes Ms. Mugleston and has known Ms. Mugleston for about 15 years, dating back to when she was in high school. TR. 1630.

Ms. Mugleston, on the other hand, testified that Steve Wallace has been very hostile in his treatment of her. TR. 135. Ms. Mugleston testified that Andy Harris told her Steve Wallace on several occasions in the control room has made negative remarks about Ms. Mugleston. TR. 102. According to Ms. Mugleston, Andy Harris reported that Steve Wallace stated to other management personnel that they should watch what they say and do around Ms. Mugleston, that they should keep an eye on Ms. Mugleston, and that they should be sure to have Ms. Mugleston document her concerns in memo form. TR. 102. Andy Harris corroborated Ms. Mugleston’s testimony, testifying that Steve Wallace, during a management meeting, commented that were it not for Ms. Mugleston and Jeff Utley, EG&G would have fewer problems and would not “have to do things the

way we do them.” TR. 825. Mr. Harris testified that other managers and supervisors during management meetings have also made snide remarks about Ms. Mugleston causing problems for EG&G. TR. 825-28. Mr. Harris testified that this sentiment would arise during daily management meetings about once a month. TR. 827. Mr. Harris did not recall any specific dates for these meetings or any specific comments that were made. TR. 827-28.

Larry Allen testified that remarks were made about Ms. Mugleston by Steve Wallace and Steve Lowry, the Operations Superintendent, during shift meetings in the months leading up to the Olympics. TR. 865-66. Mr. Allen testified that Steve Wallace basically directed Steve Lowery to leave Ms. Mugleston alone and not to agitate her, due to Ms. Mugleston’s safety and environmental concerns. TR. 867. Mr. Allen testified that Steve Wallace and Steve Lowery also expressed concerns about Ms. Mugleston seeking to shut the plant down by raising safety and environmental concerns. TR. 867. Mr. Allen testified that he last heard Steve Wallace make a remark about Ms. Mugleston in early 2003. TR. 868. According to Mr. Allen, TOCDF at the time was struggling to adjust to new procedures while changing over from GB operations to VX operations. TR. 868-69. Mr. Allen testified that Steve Wallace commented that if it were not for the issues raised by Ms. Mugleston and others, EG&G would not have to suffer through changes in the way it does business. TR. 868-69. Bobbie Earp also testified that there have been times in which Mr. Wallace made comments about Ms. Mugleston, but Ms. Earp did not recall any specific instances. TR. 780-82.

b. Steve Wallace Questioning Complainant About Shutting Down TOCDF

Ms. Mugleston testified also that Steve Wallace on one occasion asked her personally if it was her intent was to shut down TOCDF. TR. 117, 2007-09. Ms. Mugleston testified that Mr. Wallace questioned her after there were rumors at TOCDF that Ms. Mugleston had started a petition in the Tooele community to shut down TOCDF. TR. 117, 2007-09. Ms. Mugleston testified that she indicated to Mr. Wallace that the petition had nothing to do with TOCDF, but instead involved a Skull Valley nuclear plant. TR. 117. Ms. Mugleston testified that she was not trying to get TOCDF shut down and that she is not opposed to incineration as technology. TR. 1995. Ms. Mugleston testified that her intent instead was to create awareness of the safety problems at TOCDF so that other plants could address the issues before starting up. TR. 1995.

Mr. Wallace acknowledged that he spoke to Ms. Mugleston about a rumor circulating TOCDF that Ms. Mugleston had started a petition in Tooele to shut down TOCDF. TR. 1649-50. Mr. Wallace testified that Ms. Mugleston told him she had no intent to shut down TOCDF. TR. 1650. Mr. Wallace testified that he did not believe prior to this discussion that Ms. Mugleston wanted to shut down the plant. TR. 1650-51.

c. Steve Wallace Commenting that Complainant was a "Celebrity"

In May 2002, after Ms. Mugleston had filed her DOL complaint, Ms. Mugleston spoke with the media about her safety and environmental concerns. TR. 116-17, 119. Ms. Mugleston testified that she told the Utah press what her safety and environmental concerns were, that she felt many workers supported her concerns, and that someone would get hurt or killed if her safety concerns were not addressed. TR. 2013. Ms. Mugleston testified that EG&G management became aware of her media statements and that several managers, including Steve Wallace, made comments. TR. 117. Ms. Mugleston testified that Steve Wallace was asking how the new "movie star," or how the new "celebrity," was doing. TR. 117, 745-46, 2009.

Steve Wallace testified that he saw on the Internet in early September 2002 that Ms. Mugleston was a board participant or guest speaker in incineration protests in Anniston, Alabama, in connection to a demilitarization facility that was being finalized for operation at the Anniston Army Depot. TR. 1624-25. Mr. Wallace testified that TV cameras and newspaper reporters were present at the protests. TR. 1624. Mr. Wallace testified that he was surprised by the discovery and made the comment, "Gosh, we have a celebrity." TR. 1624. Mr. Wallace testified that the comment was not derogatory and that he was actually surprised and impressed with Ms. Mugleston's participation in the protests. TR. 1624. Mr. Wallace testified that he was in the control room and opined that there were about four control room operators who could have heard him. TR. 1625.

d. Other Comments Following Complainant's Media Appearance

Ms. Mugleston testified that following her Utah media appearance, there were comments about her by EG&G employees Marty Ahlstrom and Tom Duffield in local newspapers. TR. 117-18, 732, 737. According to Ms. Mugleston, their comments raised false accusations about her. TR. 117-18. Neither Marty Ahlstrom nor Tom Duffield are members of EG&G management; Marty Ahlstrom is a CHB Unpack operator while Tom Duffield is a Safety Representative. TR. 732, 737, 1232-33. Steve Wallace testified that there was quite a bit of chatter at TOCDF following Ms. Mugleston's media appearances. TR. 1628. Mr. Wallace characterized the chatter as inquisitive rather than mean-spirited. TR. 1628.

Debbie Sweeting testified that she saw Ms. Mugleston's interview with the local news station. TR. 1229-30. Ms. Sweeting recalled that Ms. Mugleston represented to the news station that 90 percent of the employees at EG&G felt the same way as Ms. Mugleston did. TR. 1230-31. Ms. Sweeting testified that shortly after the news story aired, she received a phone call at home from James Vera, an EG&G employee. TR. 1230-31. According to Ms. Sweeting, Mr. Vera was very upset and wanted to contact the news station for his own interview because he felt Ms. Mugleston was misrepresenting EG&G workers. TR. 1232. Ms. Sweeting testified that her approach to a non-

management employee who expressed disagreement with Ms. Mugleston's public statements was (1) to advise the employee that the employee too had the right to express his/her opinion and concerns in whatever way comfortable for the employee, and (2) to advise the employee that the employee could not be hostile towards Ms. Mugleston in plant interactions because of Ms. Mugleston's public statements. TR. 1232.

Ms. Sweeting testified that she attempted to contact Ms. Mugleston immediately after seeing her media statements but could not reach Ms. Mugleston. TR. 1233. Ms. Sweeting testified that she and Cindy Shumway, an HR representative, thereafter met with Ms. Mugleston when Ms. Mugleston returned to work. TR. 1233-34. According to Ms. Sweeting, Ms. Sweeting informed Ms. Mugleston that Ms. Sweeting was speaking on behalf of James Colburn, EG&G's General Manager at the time. TR. 1274-75. Ms. Sweeting testified that she wanted Ms. Mugleston to know that Ms. Mugleston had a right to do the interview, and Ms. Sweeting requested that Ms. Mugleston immediately report to EG&G officials any problems with harassment or retaliation. TR. 1233, 1274-75. Ms. Sweeting testified that Ms. Mugleston indicated no one had been giving her a hard time and that Ms. Mugleston would report any harassment or retaliation. TR. 1235, 1275. Ms. Sweeting testified that Ms. Mugleston during the meeting was bubbly, happy, and confident. TR. 1235. According to Ms. Sweeting, Ms. Mugleston expressed appreciation for the meeting. TR. 1235.

e. Comments About Complainant Over Plant Radio System

Ms. Mugleston testified that some employees have made comments about her over the plant radio system, which can be heard by the control room, entrants, door guards, and others. TR. 129-30. Ms. Mugleston testified that she heard on one occasion Jerry Safrans, a control room operator, warning entrants over the radio system that they had better be careful about what they do and say or Ms. Mugleston would turn them in to OSHA. TR. 130-31. Pat Vario likewise testified Jerry Safrans made such a comment over the radio system. TR. 655. Mr. Vario testified that he in fact told Jerry Safrans afterwards that Mr. Safrans should not be making comments like that, especially over the radio system. TR. 655. Ms. Mugleston testified that Mr. Safrans also said that Ms. Mugleston had received a \$25,000.00 cash bonus from OSHA and that Ms. Mugleston was turning over information for cash rewards. TR. 131. Ms. Mugleston testified that she has not received any cash bonuses. TR. 132.

Ms. Mugleston testified that there was also a comment made over the radio about two weeks before the hearing by Sid Lawrence, a control room operator. TR. 132. Ms. Mugleston testified that Sid Lawrence refused over the radio to page Ms. Mugleston and Mr. Utley for door guarding duties. TR. 132. Bobbie Earp testified that she also heard Sid Lawrence make this comment. TR. 776.

f. Comments on Bathroom Walls or Airlocks

Steve Land testified that there is a bathroom wall on which derogatory comments are written about individuals who are not in good standing with certain employees. TR. 625. Mr. Land refers to this bathroom wall as the "Wall of Fame." TR. 622. Mr. Land testified that this bathroom wall contains derogatory statements about Ms. Mugleston. TR. 625-26. Jeff Utley testified that during the past two years, he has observed derogatory writings about Ms. Mugleston on the bathroom walls in the MER building. TR. 728. Steve Wallace was aware of occasional derogatory comments written on bathrooms walls, lockers, and in airlocks. TR. 1641. Mr. Wallace was not aware, however, of any derogatory comments about Ms. Mugleston in those areas. TR. 1641-42.

Debbie Sweeting and Tim Olinger testified that they were not aware of any writings on bathroom walls prior to the hearing. TR. 1253, 1832. Both witnesses testified that management would clean up or remove such comments. TR. 1337, 1832. Regarding the "Wall of Fame," Ms. Sweeting testified that she contacted her office to get the wall covered, if it indeed existed. TR. 1253. Ms. Sweeting testified that she also suggested to her office that a statement about EG&G's standards of business conduct be issued by management. TR. 1253-54.

g. Negative Statements and Conduct by John Cafe

John Cafe is a control room operator responsible for issuing keys to Ms. Mugleston for keyholding. TR. 133, 715. Mr. Cafe is not a manager. TR. 1253. According to Ms. Mugleston and Mr. Utley, Mr. Cafe is very hostile towards Ms. Mugleston. TR. 133, 715-16. Ms. Mugleston testified that Mr. Cafe has intentionally made her stand and wait on several occasions for 15 minutes or longer before he issues the keys to her. TR. 133. Ms. Mugleston and Mr. Utley, who is often present because he is often paired with Ms. Mugleston as the other keyholder, testified that Mr. Cafe would ignore Ms. Mugleston, talk to other control room operators, or have personal conversations on the phone. TR. 134, 716. Ms. Mugleston and Mr. Utley also testified that Mr. Cafe commented in the lunch room to Scott Montgomery and Adam Smart about two weeks before the hearing that Mr. Cafe was talking to EG&G's attorneys in order to cause as much hate and discontent as he could for Ms. Mugleston so that Ms. Mugleston would be fired. TR. 134, 716-17.

Debbie Sweeting testified that prior to the hearing, she was not aware of any negative remarks by John Cafe regarding Ms. Mugleston. TR. 1253. Ms. Sweeting testified that upon learning about such comments in the courtroom, Ms. Sweeting directed her office to check in to the situation. TR. 1253.

h. Negative Comments by Darren Hendrix

Pat Vario testified that Darren Hendrix, EG&G's Industrial Hygienist, on one occasion while checking noise levels at the plant, commented that Ms. Mugleston was trying to shut the plant down and that Ms. Mugleston was raising safety and environmental issues only for herself and to get money. TR. 140, 658. Mr. Vario testified that Darren Hendrix blamed Ms. Mugleston for reporting the noise level concern that he was checking. TR. 140, 657-58. Ms. Mugleston testified that she did not raise the noise level concern. TR. 141.

i. Rumors About Complainant

Ms. Mugleston testified that there was a rumor circulating TOCDF that she and Jeff Utley had engaged in sexual intercourse in one of the airlocks. TR. 323. Ms. Mugleston testified that this rumor was started by Larry Allen and that she confronted Larry Allen after she heard the rumor. TR. 323. According to Ms. Mugleston, Larry Allen indicated that he merely was surprised when he saw Ms. Mugleston and Mr. Utley carrying keys in the airlock, because he did not know anyone would be in the airlock at that time. TR. 323-24. According to Ms. Mugleston, Mr. Allen indicated individuals in the Maintenance Department and elsewhere had added to the information and blew it out of proportion. TR. 324.

Ms. Mugleston testified that she also believed Erv Hillman, the Plant Shift Superintendent at the time, had wanted to cause Mr. Utley to get a divorce so that Mr. Utley and Ms. Mugleston would end up together. TR. 313-14. Ms. Mugleston testified that Mr. Hillman had informed several individuals that his plan was to make Ms. Mugleston and Mr. Utley work together on a daily basis, to further their relationship and to make Mr. Utley lose everything he had. TR. 314. Ms. Mugleston explained that Mr. Utley was a person who has had all his assets paid for. TR. 314. Ms. Mugleston testified that she learned of Mr. Hillman's intentions from Bobbie Earp, who had heard Mr. Hillman and Darryl Drewery talking about the plan many times at the smoke corral. TR. 314-15. Ms. Mugleston testified that Mr. Hillman and Darryl Drewery were jealous of Mr. Utley because of his age, status, and accomplishments. TR. 314.

j. Other Negative Comments

David Palmer testified that Darryl Drewery, Lynn Carlson, and Herman Candelaria, workers in the BRA RHA, were at one point upset with Ms. Mugleston due to the many environmental and safety issues Ms. Mugleston was raising. TR. 341. Mr. Palmer testified Darryl Drewery had to be transferred onto another team because he and Ms. Mugleston could not work together. TR. 341.

David Palmer also testified that he carools with Scott Vonhatten, Ray Bell, and Sarah Muir. TR. 338. Mr. Palmer testified that during these carpool trips, Scott Vonhatten has expressed being upset with Ms. Mugleston over some incidents that happened in the past, including the barricade tape incident. TR. 339-40. Mr. Palmer testified that other than hearing Scott Vonhatten being upset about the barricade tape incident, he did not remember any negative comments about Ms. Mugleston from management. TR. 345. Mr. Palmer testified that Sarah Muir was also upset about a disagreement with Ms. Mugleston, but Mr. Palmer did not remember what the disagreement was about. TR. 340.

Steve Land testified that over the past two years he has heard Ray Bell, Sarah Muir, and others in the control room talk about Ms. Mugleston. TR. 622. Mr. Land testified that he has also heard employee conversations in which the employees were worried about losing their jobs and were angry at Ms. Mugleston because of her safety and environmental concerns. TR. 621.

Dennis Cook testified that he has heard some workers in the PAS and BRA RHA, including Scott Vonhatten, Ray Bell, and Sarah Muir, make statements about Ms. Mugleston causing trouble and lowering morale. TR. 877-79.

Bobbie Earp testified that employees think Ms. Mugleston is trying to shut down the plant. TR. 656-57. Ms. Earp testified that she was involved in a conversation in which Sue Renzello was upset and concerned that Ms. Mugleston's only mission was to shut the plant down. TR. 776-78. Ms. Earp testified that little comments about Ms. Mugleston are made in the control room also, but Ms. Earp was unable to be more specific or to place a name with comments. TR. 779.

Ms. Mugleston testified that Brett Pfeiffer, a former PAS operator who is no longer employed by EG&G, told her that Erv Hillman, the Plant Shift Superintendent, had warned Mr. Pfeiffer to avoid Ms. Mugleston unless Mr. Pfeiffer wanted to be on management's bad list. TR. 104.

Jeff Utley testified that he personally has not heard other employees at TOCDF make derogatory remarks about Ms. Mugleston. TR. 728. Mr. Utley testified however that a petition was started at TOCDF by the "B" Team to get employees to affirm that they do not fear for their jobs, that they do not have any problems with the safety at the plant, and that they enjoy their jobs. TR. 731. Mr. Utley testified that the petition was prompted by Ms. Mugleston's environmental and safety concerns. TR. 731.

Andy Harris testified that he heard workers, including Mike Green, make comments about Ms. Mugleston the night before Mr. Harris' testimony. TR. 838-39. Mr. Harris testified that the workers commented that people were getting to leave work early to go to court and that Ms. Mugleston was causing problems. TR. 838. Mr. Harris

testified that he felt Ms. Mugleston gets beat up on at times and that things sometimes go too far. TR. 839.

Matt Glavin testified that at some time over a year ago, he heard managers and employees for "A" Team make sarcastic comments about Ms. Mugleston. TR. 1175-77. Mr. Glavin did not recall any specific comments from any specific employees. TR. 1177.

Pat Vario testified that employees think Ms. Mugleston is trying to shut down the plant. TR. 775. Mr. Vario testified also that many things were said about Ms. Mugleston about three years ago, before she began work in the BRA RHA. TR. 649-50. Mr. Vario testified that these comments included that workers should be careful about what they say and do around Ms. Mugleston because Ms. Mugleston had caused trouble for EG&G in the past. TR. 649-50. Mr. Vario testified that Erv Hillman was one of the individuals who expressed this sentiment. TR. 650. Mr. Vario testified that Steve Land went so far as to go to HR to ask why his crew had to have another woman while no other crews had women. TR. 651. Mr. Vario testified that after Ms. Mugleston began working, he found her to be a good worker and very knowledgeable, especially regarding procedure and environmental issues. TR. 651. Mr. Vario testified that Ms. Mugleston was good to work with and he and she never had any problems. TR. 651.²⁹

Von Taylor testified that he has heard employees comment that Ms. Mugleston was out to make trouble. TR. 902. However, Mr. Taylor could not remember any specific individuals. TR. 902-03. Mr. Taylor also testified that he has never heard or observed a manager make a negative comment about Ms. Mugleston. TR. 902.

Steve Wallace testified that he not heard any management or non-management personnel make a negative comment about Ms. Mugleston, except for one comment by Larry Allen. TR. 1626-27. Mr. Wallace testified that Larry Allen commented in the control room with respect to Ms. Mugleston's participation in the Anniston, Alabama protests that Ms. Mugleston was going to get the plant shut down. TR. 1627. Mr. Wallace testified that he believed Erv Hillman, Burke Leatham, Larry Allen, and the control room supervisor were probably present at the time. TR. 1627. Mr. Wallace testified that he did not recall any specific response. TR. 1627. Steve Wallace testified that there have been other comments made about Ms. Mugleston by non-management

²⁹ Debbie Sweeting testified that she received a phone call regarding Ms. Mugleston on March 19, 2002, from Pat Vario, who wished to remain anonymous. TR. 1340, 1350-51. Ms. Sweeting testified that Mr. Vario wanted to inform her that Ms. Mugleston was causing a lot of problems in the workforce. TR. 1342-43. According to Ms. Sweeting, Mr. Vario reported that Ms. Mugleston was continually taking notes during the workday, making references to her attorney, "Mitch," and indicating to other people on the team that OSHA and environmental agencies will be out shortly to shut down TOCDF. TR. 1342-43. Mr. Vario also reported that employees fear confronting Ms. Mugleston and are afraid that Ms. Mugleston is going to cause them to lose their jobs. TR. 1342-44. Ms. Sweeting testified that Mr. Vario asked why Ms. Mugleston could not be fired. TR. 1344.

personnel, but that the comments are inquisitive in nature rather than negative. TR. 1628-29.

Cliff Lee testified that he has not heard a manager make a negative comment about Ms. Mugleston. TR. 891-92. Mr. Lee testified that he has observed only that managers have been careful not to boss or push Ms. Mugleston too much since she filed her lawsuit. TR. 892. Scott Monsen testified that he has never heard any negative comments about Ms. Mugleston or that Ms. Mugleston was seeking to shut down TOCDF. TR. 646.

Tonya Elkington testified that she was not aware of any negative comments from either managers or co-workers about Ms. Mugleston. TR. 1407. Ms. Elkington testified that any comments about Ms. Mugleston have been more fearful or cautious in nature than negative. TR. 1407. Ms. Elkington testified that these comments involved workers indicating that they did not want to be involved in Ms. Mugleston's dispute and did not want to say or do anything wrong. TR. 1407.

Scott Vonhatten testified that he has not heard any manager make any negative remarks about Ms. Mugleston. TR. 1684-85. Likewise, Bruce Anderson and Tim Olinger testified that he is not aware of any negative comments by managers about Ms. Mugleston. TR. 371, 1831-32.

B. EG&G's Treatment of Safety and Environmental Complaints by Others

1. Andy Harris

Andy Harris, a former CHB Unpack lead, was involved in an incident on January 30, 2002 in which a munition was dropped in the Unpack area. TR. 112-14, 666-67, 831. Andy Harris and Pat Vario explained that they were transporting munitions on a forklift when one of the prop charge cans, a container storing warheads and chemical agent, fell to the ground. TR. 666-67, 831-33. Mr. Vario testified that this had occurred numerous times in the past. TR. 666-67. After the munition was dropped, an ACAMS alarmed. TR. 114, 667. Mr. Vario testified that five or six employees indicated to EG&G management that munitions had always been transported in the same manner as the dropped munition on January 30, 2002. TR. 667. Mr. Vario testified that EG&G management nevertheless denied that the standard procedure was followed during the incident. TR. 667.

Andy Harris was suspended after the incident pending an investigation into the incident. TR. 667-68. Mr. Harris testified that as a result of the investigation, he was demoted to a CHB Unpack operator and moved to another team. TR. 833. Mr. Harris testified that EG&G alleged that Mr. Harris lied about the incident to an Army investigator. TR. 836-38. Mr. Harris testified that he told the Army investigator that the

projectiles were already leaking and that the projectiles should have been packaged and transported in oncs, air tight containers designed to store munitions. TR. 837-38.

After he was demoted, Mr. Harris filed a formal grievance with EG&G and ultimately filed a DOL complaint through an attorney. TR. 834-35. Ms. Mugleston testified that Mr. Harris discussed with her that he filed a complaint for discrimination and unfair treatment. TR. 113-14. Ms. Mugleston testified that Mr. Harris sought her help with his complaint, asking her what she thought his rights were in getting his job back. TR. 114. Mr. Harris testified that the dispute was ultimately resolved and he got his job back with lost wages. TR. 835.

Tim Olinger testified that raising safety and environmental concerns is a good thing and part of an employee's job. TR. 1835-36. Mr. Olinger testified that non-leaking munitions were transported in oncs. TR. 1855. According to Mr. Olinger, leaking munitions were placed in an overpack because they were known to be leaking. TR. 1855. Mr. Olinger testified that overpacks are not opened in the Unpack area. TR. 1770. With respect to the Janaury 30, 2002 incident, Mr. Olinger testified that an overpacked munition was dropped in the Unpack area, causing an agent leak and ACAMS alarm. TR. 1777-78. Mr. Olinger explained that the munition fell out of its cradle while being transported using a forklift. TR. 1778. Mr. Olinger testified that the dropped munition had been placed in a prop charge can and transported from the storage area of TOCDF. TR. 1842. Mr. Olinger did not know whether prop charge cans were airtight. TR. 1843. Mr. Olinger testified that although the prop charge can that was holding the leaking munition conceivably may itself have been leaking, an agent leak was not detected until the munition was dropped. TR. 1857.

2. LSS Air Hoses

Larry Allen testified that he raised a concern about the LSS air hoses four or five years ago to EG&G management. TR. 853-54. Mr. Allen testified that after his concerns were not addressed after about one year, he raised his concerns to PMCD, the Army institution overseeing TOCDF at the time. TR. 854, 870. Mr. Allen testified that he spoke to Dave Jackson and Monty Caldwell at PMCD. TR. 854, 870. According to Mr. Allen, PMCD then referred the matter to EG&G's risk manager. TR. 854. Mr. Allen testified that he was thereafter told by Cory Christensen, EG&G's Shift Manager at the time, that he was not allowed to talk about the LSS air hoses and that Mr. Christensen was under direction from James Colburn and Jimmy Clark to terminate Mr. Allen if he raised the issue again. TR. 855. According to Mr. Allen, he responded that the issue was a serious safety issue, that he would not subject anyone to the possibility of being contaminated, and that EG&G should fire him immediately if EG&G had intentions to quiet him. TR. 856. Mr. Allen testified that in 2000, his team for a period of 6 to 8 months worked out the hose problem on its own by requesting additional sampling. TR. 856-57. According to Mr. Allen, his team was thereafter told that the additional sampling

was causing an extra work load, and his team was directed to treat the air hoses as clean for the 24 hours after they were tested. TR. 856-58. Mr. Allen testified that different air stations would come back contaminated on a day-to-day basis during this time. TR. 858.

Andy Harris testified that he has heard workers say that it does no good to talk to management about safety and environmental concerns. TR. 841-42. Mr. Harris testified that people, such as Larry Allen and himself, have been harassed after requesting that the LSS air hoses be sampled and deemed clean before each entry. TR. 843, 849-50. Mr. Harris testified that he generally was told that the job had to be done and that he should not make it an issue. TR. 849-50. Mr. Harris testified that he received what he described of as the "look of death" from Steve Lowry, his supervisor at the time, when he raised the issue. TR. 850.

Tim Olinger testified that Mr. Allen has raised the LSS air hose issue since at least the summer of 2001 and that Mr. Allen continues to raise the issue. TR. 1824. Mr. Olinger testified that Mr. Allen has not been ordered to stop raising the issue and that Mr. Olinger was not aware of any negative consequence to Mr. Allen for raising the issue. TR. 1824. Mr. Olinger acknowledged that LSS air hoses are tested only every twelve hours, allowing multiple entries to occur between testings. TR. 1890-91. Mr. Olinger conceded that a hose potentially may become contaminated during the entries before the hose is retested 12 hours later. TR. 1891. Mr. Olinger testified that no worker has ever been asked to use an LSS air hose that was known to be contaminated with agent. TR. 1823. Mr. Olinger was also not aware of any workers being pressured to use hoses whose contamination status was unknown. TR. 1889. Mr. Olinger testified the LSS air hose sampling methods are based on the Army's safety pamphlet and that the Army is aware of the LSS sampling methods used by EG&G. TR. 1824-25. Mr. Olinger testified that State regulators are also aware of the LSS sampling practices, as it is part of EG&G's operating permit. TR. 1825.

Mr. Olinger testified that he would decertify an air station if an employee feared the station had become contaminated during a particular entry and provided valid reasons to support the belief. TR. 1892-93. Mr. Olinger testified that a simple concern that the air hose was used in an agent contaminated area would not be sufficient to persuade him to decertify the air hose. TR. 1893-94. Mr. Olinger testified that if an employee refused to use an air hose until testing results came back revealing the hose was presently clean, then Mr. Olinger would discuss the issue with the employee. TR. 1890. Mr. Olinger testified that he would discuss with the employee the statistics, the testing that has been done, the agent readings in the room, and the safety systems of the air hoses. TR. 1895. Mr. Olinger explained that performing DPE entries is part of the job at EG&G. TR. 1893. Mr. Olinger testified that he expects his workers to use an air hose even if new testing results have not come back yet, but that he would want to resolve the concerns of the workers. TR. 1895-99. Mr. Olinger testified that he ultimately would not force an employee to use an air hose against his/her will. TR. 1895-99. Mr. Olinger testified that

although air hose testing has come back positive for contamination on certain occasions, the system is safe and valid. TR. 1899. Mr. Olinger testified that no individual has ever been contaminated from LSS air hoses. TR. 1897.

3. Von Taylor and Pat Vario

Von Taylor testified that Steve Wallace's attitude towards production versus safety was that it would be insubordination for a worker not to complete what the worker was directed to do. TR. 90-01. Mr. Taylor testified that Steve Wallace commented three or four years ago that if a worker refused to complete a task, then there was a stack of applications ready to go. TR. 900-02. Mr. Taylor testified that Mr. Wallace has had a change in attitude in the last six months. TR. 902.

Pat Vario testified that he raised a safety concern about leaking munitions, but that his concern was treated by managers like every other concern raised at that time: if one did not like the way things were handled, then the company would hire someone else. TR. 661. Mr. Vario testified that he has seen satisfactory progress currently under the new management, which has been in place for about one month, but that safety concerns previously did not garner much attention. TR. 661-62.

4. Steve Land

Steve Land testified that during an interview for a PAS operator position, he was asked what action he would take if two people were talking badly about management. TR. 597. Mr. Land testified that he answered that he would side against the employees if they were wrong and he would side with the employees if they were right. TR. 630. After the interview, Mr. Land questioned Debbie Sweeting about the appropriateness of the question. TR. 597. Mr. Land testified that Ms. Sweeting indicated it was a bad question. TR. 630. According to Mr. Land, he asked Mr. Burke, who performed his interview, the next day what the desired answer was to the question. TR. 598. Mr. Land testified that Mr. Burke indicated that the desired answer was not to associate with that type of employee. TR. 598. Mr. Land testified that he was not hired for the opening. TR. 1946. According to Mr. Land, he had raised safety and environmental concerns prior to this interview.³⁰ TR. 1956.

Ms. Sweeting acknowledged that Steve Land did report to her that he was asked during an interview about what he would do if employees were bad-mouthing EG&G management. TR. 1251. Ms. Sweeting testified that she responded that the question was job-related but was not totally appropriate. TR. 1251-52. Ms. Sweeting testified that she

³⁰ Although Mr. Land was not offered the PAS operator position after his first application, Mr. Land underwent another interview for a second PAS operator opening about one month later and was hired. TR. 630.

informed Mr. Land she would ensure that the issue was addressed in EG&G's supervisor management training. TR. 1252. Ms. Sweeting testified that Mr. Land never raised a concern to her about not being hired as PAS operator. TR. 1252.

C. EG&G's Safety and Environmental Policies

Ms. Mugleston testified that she received a very negative response from EG&G regarding her safety and environmental memos. TR. 77. She testified that while management indicated her ideas were very good, management felt that the procedures at issue were open to interpretation and that her safety and environmental concerns were not valid. TR. 77. Ms. Mugleston also took issue with EG&G's attitude regarding safety versus production during the months leading up to the 2002 Salt Lake City Olympic Games. TR. 64-65. Ms. Mugleston testified that during that time, EG&G was pushing production over safety, basically offering bonuses to employees if the GB campaign were finished before the Olympics. TR. 65. Other workers, including Steve Land, Pat Vario, and Andy Harris, likewise testified that EG&G during the several months leading up to the Olympics, was pushing production over safety in order to finish its munitions processing before the Olympics started. TR. 599, 664, 844-45. According to Andy Harris, EG&G slowed down on production and prioritized safety only after the July 15, 2002 contamination incident involving Matt Glavin. TR. 845.

According to Tonya Elkington and Tim Olinger, the Army wanted EG&G to complete processing of its GB stockpiles before the Olympics, in order to reduce the risks of terrorism. TR. 1384, 1771-72. Terrorism was a concern following the events of September 11, 2001. TR. 1771-72. Mr. Olinger testified that a bonus of \$750 per employee, regardless of position, was offered by the Army if the GB campaign was completed before the Olympics. TR. 1772. EG&G employs about 700 workers at TOCDF. TR. 1852. The terms of this bonus entailed not only completing the GB processing, but also having a reportable injury rate of less than 3.5, no injuries causing lost time, no confirmed agent exposure to individuals, and no confirmed agent releases to the atmosphere. TR. 1385, 1772-73. In order to prevent workers from hiding injuries that would jeopardize the bonus, anyone who was identified as not reporting an injury during that period would be ineligible for the bonus. TR. 1772-73. The GB processing ultimately was not completed prior to the Olympics. TR. 1385. Nevertheless, each employee received the \$750 bonus when the GB was completed on March 17, 2002. TR. 1385.

Mr. Olinger testified that, independent of the Olympics bonus and of EG&G's base contract compensation, an award fee is available to EG&G from the Army every six months. TR. 1852-54. This award fee is based on the following formula: 35% related to safety, 30% related to environmental compliance, 20% related to technical performance, and 15% related to cost to performance. TR. 1852-53. Mr. Olinger acknowledged that non-compliances were part of the award fee, so that EG&G's award fee would be

negatively affected if employees reported valid environmental violations. TR. 1853-54. Mr. Olinger was proud of TOCDF's safety record and indicated that the plant was over one million man hours without a lost time work incident. TR. 1834.

Mr. Olinger testified that TOCDF's operations are overseen by the Army's Chemical Management Agency (CMA), the successor to PMCD. TR. 1748. Mr. Olinger testified that there are always at least two CMA representatives on-site at TOCDF, and he estimates that there are 50 full-time Army employees working in the immediate vicinity of TOCDF. TR. 1748-49. Mr. Olinger testified that CMA's representatives have an office just outside the control room and that there is general interaction between EG&G employees and CMA officials. TR. 1749-50.

Mr. Olinger testified that EG&G has always encouraged its workers to bring forward any safety or environmental concerns. TR. 1750. He testified that EG&G has had programs in place for years to encourage such reporting, including a recently implemented Safety Concern and Improvement Program. TR. 1750. The Safety Concern and Improvement Program seeks to have employees document concerns, work with their supervisors on a proposed corrective action, actually implement that corrective action if it is approved, and bring the issue to closure. TR. 1750-51. Mr. Olinger testified that it is difficult for EG&G to merely receive suggestions. TR. 1751. EG&G instead is seeking specific solutions. TR. 1751-52. If the employee's concern is brought to closure, the employee is entered into a drawing for monthly incentives. TR. 1751.

Mr. Olinger testified that EG&G has a central day shift core safety committee and smaller safety committees for each of the shifts, made up of department representatives from within that shift. TR. 1752. Mr. Olinger testified that the safety committees on each crew have about 8 to 10 members, while the central day shift core crew has more. TR. 1752. Mr. Olinger testified that the safety committee is responsible for several activities, including weekly meetings to discuss the status of issues that have been raised, sending blank posters home for employees' children to make safety posters, holding drawings based on those posters, and providing feedback to the company and employees about the progress of corrective actions. TR. 1752-53. Mr. Olinger testified that employees raise issues to the safety committee, and the committee, using a database that tracks the progress of safety issues, will in turn report back to the employees about the progress of the investigation into that concern. TR. 1753. Mr. Olinger testified that he tries to resolve safety and environmental issues that have been raised by employees to the satisfaction of those employees, but that it is not always possible because there are personal preferences that may be involved. TR. 1834.

Tonya Elkington testified that there are 10 employees in the Environmental Compliance Division of EG&G's Environmental Department. TR. 1355. Ms. Elkington testified that there is one Environmental Shift Inspector per shift. TR. 1355. These inspectors have the authority to stop operations due to a noncompliance. TR. 1355.

According to Ms. Elkington, the Environmental Department roams the plant, performs environmental inspections, and audits of the plant's operating record. TR. 1354. Ms. Elkington testified that the Environmental staff encourages workers to report environmental issues by taking the initiative to talk to workers and by conducting informal training sessions to make the workers aware of their responsibility to report environmental violations. TR. 1365.

Ms. Elkington testified that the Army has oversight over TOCDF, with at least one full-time worker and 10 support workers at the plant per shift. TR. 1363. EG&G is also regulated by the State of Utah, Division of Solid and Hazardous Waste (DSHW). TR. 1357. Ms. Elkington testified that there are about 10 employees from DSHW that have inspection authority at TOCDF. TR. 1362. The access of these DSHW officials is not restricted, and the officials are typically available daily around the plant to speak with EG&G employees. TR. 1362.

Ms. Elkington testified that the EG&G Environmental Department performs self-inspections at TOCDF through on-site inspections of TOCDF's various work areas, inspections of waste, double checking inspections conducted by Operations, and inspections of recordkeeping. TR. 1356. Ms. Elkington testified that these inspections are performed on a daily, weekly, monthly, quarterly, semi-annual, and annual basis. TR. 1356-57. A failure to perform the requisite inspections is reported to DSHW. TR. 1357-61. Ms. Elkington testified that the Environmental Department also compiles annual noncomplianace reports that are submitted to DSHW. TR. 1360. Ms. Elkington testified that DSHW reviews the report and typically compiles a Notice of Violation to send back to EG&G. TR. 1361. Ms. Elkington testified that on average, 90% of the violations in the Notice of Violation have been self-reported by EG&G. TR. 1361.

Ms. Elkington testified that EG&G prepares incident reports for ACAMS alarms, injuries, and unusual occurrences. TR. 1363-64. Ms. Elkington testified that the Army always gets a copy such reports and the DSHW almost always gets one, depending on the nature of the incident. TR. 1364. The incidents are investigated, and corrective actions are researched and implemented. TR. 1364. Ms. Elkington and Mr. Olinger testified that no incident to their knowledge has ever been concealed from the Army or DSHW. TR. 1364, 1380-81, 1868-69. Ms. Elkington testified as well that she was not aware of any failures of EG&G managers to report incidents internally. TR. 1491. Ms. Elkington opined that TOCDF's environmental compliance was very good, based on other facilities' regulatory history, TOCDF's self-audit program, and feedback from regulators who are very complimentary of TOCDF's process. TR. 1408.

Ms. Elkington testified that as an Environmental Inspector and as a Chief Inspector, she trained employees concerning the reporting of environmental issues. TR. 1386. Ms. Elkington testified that no employee has ever told her that he/she suffered a negative consequence because of reporting a concern. TR. 1386. Ms. Elkington testified

that it is part of her job to ensure compliance with the RCRA provision against retaliation. TR. 1414. However, Ms. Elkington personally has not done any investigation to ensure that retaliation is not taking place in the workplace. TR. 1414. Ms. Elkington testified that she did not question Steve Jones, Trina Allen, Andy Harris, Brenda Mugleston, or Jeff Utley to determine whether they felt they were being retaliated against. TR. 1414-16. Ms. Elkington testified that there are no formal procedures in the Environmental office that are used routinely to determine whether or not retaliation is taking place in the workplace. TR. 1416.

Debbie Sweeting testified that EG&G informs its employees that they should report safety and environmental concerns or unfair treatment immediately to their supervisor or manager. TR. 1210-11. If the employee feels uncomfortable doing so, then the employee may report the concern or unfair treatment to the next level of management or directly to HR. TR. 1210-11. Ms. Sweeting testified that EG&G also encourages employees to contact the General Manager, the Corporate HR Department, or the Corporate General Counsel. TR. 1210. Ms. Sweeting testified that EG&G also has a hotline to its corporate offices that is anonymous and managed by EG&G's Corporate General Counsel. TR. 1211. Despite Ms. Sweeting's testimony however, Steve Land and Jeff Utley testified that they had no knowledge of any such hotline. TR. 1947, 1962.

With respect to safety and environmental concerns, Steve Wallace testified that it is essential to have employees who raise safety and environmental issues. TR. 1630. Mr. Wallace testified that he expected all employees to bring forth safety and environmental deficiencies so that the plant would operate better and accidents could be prevented. TR. 1630. Mr. Wallace testified that it is important that Ms. Mugleston raised her safety and environmental issues. TR. 1630-31. EG&G Safety Representatives Ryan Taylor and Bruce Anderson testified that employees raise environmental and safety concerns at TOCDF freely. TR. 371, 1028-30. Mr. Taylor testified that safety or environmental concerns are raised to him at least once a week. TR. 1029-30.

A report issued by the Department of Defense, Office of the Inspector General regarding the causes and effects of the July 15, 2002 chemical agent exposure incident at TOCDF indicated that TOCDF did not have a healthy safety culture, defined as a set of attitudes and attributes reflected in workers, supervisors, and managers that safety is the fundamental priority and prerequisite for doing work. CX-44, p. 8. The report found that, based on interviews by the IG's office with EG&G employees, communication between employees and supervisors was ineffective and that some employees were not comfortable raising concerns to their direct supervisors. CX-44, p. 9. A survey of 212 EG&G employees conducted as part of the IG's investigation revealed that 93% of the respondents were aware of the hazard-reporting processes at TOCDF while 7% were not; 78% of respondents did not feel that others will dismiss their concerns if they reported a safety issue or hazard while 19% did; 44% of respondents had raised a safety or hazard concern using the formal reporting system while 56% had not; 39% of respondents felt

that management had adequately responded to safety or hazard concerns they raised while 17% did not; 24% of respondents indicated they would be more willing to voice concerns if they could report them to an authority outside EG&G while 71% indicated an outside authority would not make a difference; 77% of respondents indicated that management followed published hazard reporting procedures while 15% felt management did not; 88% of respondents believed that management encouraged the reporting of health and safety issues while 9% did not; 82% of respondents felt comfortable raising safety or hazard concerns to their supervisor while 17% did not; 16% of respondents indicated that they had been told in the past to fix a problem and not report it while 82% indicated that they had not; 52% of the respondents believed EG&G placed production over safety while 42% did not; and 94% of the respondents did not know of any worker being exposed to chemical agent without reporting the incident while 4% indicated they did. CX-44, p. 8.

D. Complainant's Damages

Ms. Mugleston testified that the treatment that she has received from EG&G since her 1998 settlement has greatly impacted her life in a negative way. TR. 180. Ms. Mugleston testified that EG&G laid her off from work, which caused her to make a hardship withdrawal from her 401(k) account in order to retain her home and pay medical bills. TR. 180, 266-67. Ms. Mugleston also testified that she has suffered much stress due to negative sentiments from co-workers who feel that she is going to shut down the plant and cost everybody their jobs. TR. 180-81. Ms. Mugleston testified that she has lost a large majority of her friends, both while at work and after work. TR. 181. She testified that her treatment from management has affected her stress levels greatly, causing her on several occasions to go to the emergency room due to anxiety attacks and acid reflux from the stress. TR. 181.

Ms. Mugleston testified that she was experiencing a rather stressful time in her life. TR. 211. Ms. Mugleston testified that while things had become better for her for about a year after her settlement, she began to encounter more and more workplace hardship in late 2000 and mid-2001. TR. 275. Ms. Mugleston testified that after she formulated her October 2001 memo, the hardship became even worse for her. TR. 277. Ms. Mugleston testified that she has been a bubbly person all her life, with the exception of the recent difficult years at EG&G. TR. 2017.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact and conclusions of law are based upon the Court's observation of the appearance and demeanor of the witnesses at the hearing and upon an analysis of the entire record, applicable regulations, statutes, case law, and arguments of the parties. Fradley v. Tennessee Valley Authority, 92-ERA-19 (Sec'y, October 23, 1995) (Slip Op. at 4.). As the trier of fact, the Court may accept or reject all or any part of the

evidence and rely on its own judgment to resolve factual disputes or conflicts in the evidence. Indiana Metal Products v. NLRB, 442 F.2d 46, 51 (7th Cir. 1971). To the extent that credibility determinations must be made, the Court bases its credibility findings on a review of the entire testimonial record and exhibits, with due regard for the logic of probability and the demeanor of the witnesses.

LEGAL ANALYSIS OF WHISTLEBLOWER CLAIM

The employee protection provisions of the environmental acts prohibit an employer from taking adverse employment action against an employee because the employee has engaged in protected activity. Jenkins v. United States Environmental Protection Agency, ARB No. 98-146 at 14, 1988-SWD-00002 (ARB Feb. 28, 2003). To prevail on a complaint of unlawful discrimination under these environmental retaliation statutes, a complainant first must establish a *prima facie* case, thus raising an inference of unlawful discrimination. Id. at 15. A complainant meets this burden by showing that (1) the employer is subject to the applicable retaliation statutes, (2) that the complainant engaged in activity protected under the statutes of which the employer was aware, (3) that she suffered adverse employment action, and (4) that a nexus existed between the protected activity and the adverse action. Id.

The burden then shifts to the employer to produce evidence that it took adverse action for a legitimate, nondiscriminatory reason. Id. In the event that the employer meets this burden of production, the inference of discrimination disappears, leaving the single issue of discrimination *vel non*. Id. The complainant then must prove by a preponderance of the evidence that the employer intentionally discriminated. Id. The ultimate burden of persuasion rests always with the complainant. Id. To meet this burden, a complainant may prove that the legitimate reasons proffered by the employer were not the true reasons for its action, but rather were a pretext for discrimination, i.e., are unworthy of credence. Id. An adjudicator's rejection of an employer's proffered legitimate explanation for adverse action permits, rather than compels, a finding of intentional discrimination. Id. That is, it is not enough to disbelieve the employer; the factfinder must believe the complainant's explanation of intentional discrimination. Id.

I. Complainant's Protected Activity

There is no dispute that Ms. Mugleston has raised safety and environmental concerns at TOCDF, both verbally and in writing, of which EG&G management was aware. TR. 67-69, 149, 277-79, 357-58, 371-73, 542-43, 1217-19, 1270-71, 1642-43, 1718-19, 1782-83, 1839; RX-1; RX-37. Specifically, Ms. Mugleston has raised concerns about the number of workers in the MPF Cool Down area, respiratory issues in the MPF cool down area, the failure of emergency generators at the plant, contaminated tap gear, HDC waste and HDC bin change outs, SCBA backpacks, munitions unloading, ACAMS monitoring, chemical agent sampling in the airlocks, brine tank operations, constant

changes to workplace procedures, LSS airhoses, the failure to follow procedures during entries, inadequate responses to waste feed cutoffs, inadequate incident reporting, inadequate waste and munitions tracking, and operations in the Cyclone area. TR. 40-51-82, 138-39, 277-297, 321-22, 342, 606-17, 676-78, 697-98, 713-14, 785-87, 846-60, 886-87, 941, 1077-88, 1380-89, 1424, 1825-26, 1840-41, 1876, 2005; RX-1; RX-37.

II. Applicability of Environmental Statutes

Both parties agree that the employee protection provisions of the Solid Waste Disposal Act, 42 U.S.C. §§ 6901 *et seq.*, also known as the Resource Conservation and Recovery Act (RCRA), apply in this case. The RCRA regulates the disposal of hazardous waste through a permit program run by the Environmental Protection Agency (EPA), but subject to displacement by an adequate state counterpart. U.S. Dept. of Energy v. Ohio, 503 U.S. 607, 611, 112 S.Ct 1627, 1631, 118 L.Ed. 2d 255 (1992). TOCDF has an RCRA permit from the State of Utah which regulates several items about which Ms. Mugleston has raised concerns, including chemical warfare agent releases, noncompliance reporting, ACAMS functioning, inspections of the HDC bin, testing of LSS air hoses, and automatic waste feed cutoffs. TR. 1358, 1378-79, 1400, 1406, 1427, 1432-33, 1437-38, 1441, 1490, 1498. Therefore, the Court finds that Ms. Mugleston's safety and environmental concerns do implicate the RCRA and that her case is properly before the Court pursuant to the retaliation provisions under the RCRA.

The Court finds that the retaliation provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 *et seq.*, also apply to this case. CERCLA is a broad remedial statute designed to enhance the authority of the EPA to respond effectively and promptly to toxic pollutant spills that threaten the environment and human health. B.F. Goodrich Co. v. Murtha, 958 F.2d 1192, 1197 (2nd Cir. 1992). Reporting is generally required under CERCLA of releases, other than a federally permitted release, of a "hazardous substance" from a "facility," as those terms are defined under CERCLA. 42 U.S.C. § 9603. CERCLA defines "hazardous substance" as any substance so designated by the EPA pursuant to § 9602 of CERCLA or any substance designated as hazardous in referenced sections of the Clean Air Act, Clean Water Act, RCRA, and Toxic Substances Control Act. See 42 U.S.C. §§ 9601 and 9602; B.F. Goodrich, 958 F.2d at 1199-1200. Mercury is a hazardous substance under CERCLA. See 40 C.F.R. § 302.4. In addition, EG&G is the operator of TOCDF, and TOCDF a "facility" within the meaning of CERCLA because mercury is located at TOCDF. See 42 U.S.C. §§ 9601 and 9607; TR. 55, 1403-05. Ms. Mugleston has raised concerns about the tracking of mercury at the plant and releases of mercury into the environment. TR. 56-57. Therefore, the Court finds that EG&G is subject to the employee protection provisions of CERCLA and that Ms. Mugleston has engaged in protected activity pursuant to CERCLA.

The Court finds that the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*, also known as the Clean Water Act (CWA), does not apply in this case. The CWA prohibits discharge of any chemical warfare agent into navigable waters. 33 U.S.C. § 1311(f); Chemical Weapons Working Group, Inc. v. U.S. Dept. of the Army, 111 F.3d 1485, 1490 (10th Cir. 1997). Ms. Mugleston contends that the CWA applies in this case based on her disclosures about agent releases into the atmosphere. Specifically, Ms. Mugleston asserts that the agent releases at TOCDF into the open environment would eventually settle onto the ground, at which time rain may cause the agent contamination to run off into protected waters. The path of agent releases into the open environment suggested by Ms. Mugleston is not supported by any facts in the record and is purely speculative. Ms. Mugleston's broad construction of the phrase "discharge...into the navigable waters" under § 1311(f) would necessarily result in regulation under § 1311(f) of any air emission that might possibly result in atmospheric deposition into navigable waters. See Chemical Weapons, 111 F.3d at 1490. Such a broad applicability of the CWA was not the intent of Congress. See id. Therefore, the Court finds that Ms. Mugleston is not protected by the retaliation provisions of the CWA.

Likewise, the Court finds that the retaliation provisions of the Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f *et seq.*, do not apply in this case. The SDWA was enacted to ensure that public water supply systems meet minimum national standards for the protection of public health. National Wildlife Federation v. U.S. E.P.A., 980 F.2d 765, 768 (D.C. Cir. 1992). Although Ms. Mugleston raised concerns about chemical agent releases into the environment, there has been no evidence indicating that these releases involve the contamination of a public water system. Ms. Mugleston contends that the SDWA is implicated because agent releases at TOCDF would eventually settle onto the ground, be transported into surface and ground waters via rain runoff routes, and ultimately impact drinking water supplies. This proposition is merely conjecture and demands too broad an interpretation of the reach of the SDWA. See Chemical Weapons, 111 F.3d at 1490. Therefore, the Court finds that the SDWA does not apply in this case.

The Court also finds that Ms. Mugleston is not protected by the retaliation provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 *et seq.* With respect to EG&G, the TSCA is implicated through the handling of polychlorinated biphenyls (PCBs) at TOCDF. TR. 343, 609, 703, 1381, 1786, 1868; 15 U.S.C. § 2605; 40 C.F.R. Part 761. One of the munitions destroyed at TOCDF is M55 rockets. TR. 1381. These rockets are stored in shipping and firing tubes that contain PCBs. TR. 343, 609, 703, 1381, 1786, 1868. The tubes are burned in the deactivation furnace, with the waste from the deactivation furnace eventually being deposited in the HDC bin. TR. 609-10, 703-04, 1382, 1417, 1868. Ms. Mugleston raised concerns regarding findings of chemical agent in the HDC bin waste and releases of agent into the environment from the HDC bin. Ms. Mugleston asserts that the TSCA is implicated in her case because her concern that chemical agent was not adequately being destroyed in the deactivation

furnace effectively disclosed to EG&G management that the deactivation furnace was also not adequately destroying PCBs as required under the TSCA.

Coverage for Ms. Mugleston's activities that otherwise qualify for protection under the TSCA is contingent on proof that (1) those activities were based on Ms. Mugleston's actual belief that EG&G was acting in violation of the TSCA and (2) that such belief was reasonable. See Melendez v. Exxon Chemicals Americas, ARB No. 96-051 at 18-19, 93-ERA-00006 (ARB July 14, 2000); see also Minard v. Nerco Delamar Co., Case No. 92-SWD-1, pp. 7-16 (Sec'y Jan. 25, 1994). That is, Ms. Mugleston's belief that EG&G was acting in violation of the TSCA must be scrutinized under both subjective and objective standards: she must have actually believed that EG&G was not properly destroying PCBs or otherwise acting in violation of the TSCA and her belief must be reasonable for an individual in Ms. Mugleston's circumstances having her training and experience. See Melendez at 20.

After reviewing the evidence, the Court finds that Ms. Mugleston did not have a subjective belief that EG&G was acting in violation of the TSCA. The fact that PCBs and chemical warfare agent are destroyed in the same furnace, the waste from which ends up in the same bin, establishes only that Ms. Mugleston's belief would have been reasonable. Such circumstances do not establish that she had the belief in the first place. Nothing in the record indicates that Ms. Mugleston's concerns regarding the HDC bin waste or anything else involved PCBs or the TSCA. Neither her memorandums to management nor her testimony, regarding her disclosures to EG&G or otherwise, mention PCBs or the TSCA. The evidence in this case weighs in favor of finding that Ms. Mugleston's HDC bin waste concerns were related only to chemical warfare agent. The mere possibility that PCBs could also be an issue with the HDC bin waste does not legitimize an after-the-fact revision of the makeup of Ms. Mugleston's HDC bin concerns.

The Court points out that an employee's lack of knowledge of the specific requirements of the TSCA will not preclude a finding that the employee reasonably perceived that her employer was acting in violation of the TSCA. See id. However, that is not the case here. The evidence does not support a finding that Ms. Mugleston was mistaken about the TSCA or the substances regulated thereunder. Instead, the evidence supports a finding that Ms. Mugleston's concerns in connection with the HDC bin dealt only with the presence of agent and releases of agent, and did not involve and were not brought about based on PCBs or the TSCA at all. Therefore, the Court finds that Ms. Mugleston is not entitled to protection under the TSCA in this case.

III. Adverse Employment Actions and Hostile Work Environment

No employer subject to the provisions of the RCRA or CERCLA may discharge any employee or otherwise discriminate against any employee with respect to the

employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, engaged in an activity protected under the RCRA or CERCLA. 29 C.F.R. §§ 24.1 and 24.2. An employer is deemed to have violated the RCRA or CERCLA if the employer intimidates, threatens, restrains, coerces, blacklists, discharges, or in any other manner discriminates against an employee because the employee has engaged in protected activity. 29 C.F.R. § 24.2.

Not every action taken by an employer that renders an employee unhappy constitutes an adverse employment action. Jenkins at 19. To be actionable, an action must constitute a "tangible employment action," for example, "a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." Id.; Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 761 (1998). Obviously material adverse actions such as discharge, demotion, or loss of benefits and compensation are actionable. Jenkins at 19. Less obvious actions likewise are actionable, such as stripping an employee of job duties or altering the quality of an employee's duties, if such actions have tangible effects. Jenkins at 19.

In addition to tangible employment actions, Ms. Mugleston has alleged that she suffers from a hostile work environment as a result of her protected activities. Under a hostile work environment theory of recovery, a complainant is not required to have had economic or tangible job detriment such as that resulting from discharge, failure to hire, or demotion. Jenkins at 42. A complainant instead is required to prove: 1) she engaged in protected activity; 2) she suffered intentional harassment related to that activity; 3) the harassment was sufficiently severe or pervasive so as to alter the conditions of employment and to create an abusive work environment; and 4) the harassment would have detrimentally affected a reasonable person and did detrimentally affect the complainant. Id. Circumstances germane to gauging a work environment include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. Id. A respondent is liable for the harassing conduct of a complainant's co-workers if the employer knew, or in the exercise of reasonable care should have known of the harassment and failed to take prompt remedial action. Id.

A. Timeliness

The RCRA and CERCLA require that a complainant file a whistleblower complaint within 30 days of a discrete adverse employment action. 42 U.S.C. § 6971; 42 U.S.C. § 9610; 29 C.F.R. § 24.3; Jenkins at 12. The 30-day limitations period begins to run on the date that a complainant receives final, definitive, and unequivocal notice of an adverse employment action. Jenkins at 12. The date that an employer communicates its decision to implement such an action, rather than the date the consequences are felt,

marks the occurrence of the violation. Id. A complaint alleging a hostile work environment is not time-barred if all the acts comprising the claim are part of the same practice and at least one act comes within the 30-day filing period. Id. The 30-day limitations period is not jurisdictional and is subject to modification, such as through waiver, estoppel, or equitable tolling, when fairness requires, *e.g.*, when a complainant receives inadequate notice of adverse action or affirmative misconduct on the part of a respondent lulls the complainant into inaction. Id.

In this case, the Court finds that Ms. Mugleston's complaint was timely filed with respect to ten alleged adverse employment matters: 1) the submission by EG&G of PDI to Ms. Mugleston's CPRP Certifying Official, 2) the April 8, 2002 reprimand given to Ms. Mugleston in connection with the hard hat incident, 3) the December 2002 or January 2003 refusal to remove the hard hat reprimand from Ms. Mugleston's personnel file, 4) the April 2002 refusal of a letter of recommendation for Ms. Mugleston, 5) Ms. Mugleston's June 2002 suspension from the keyholding list as a result of the Door 255 incident, 6) the August 2002 cancellation of Ms. Mugleston's Utilities cross-training, 7) the failure during the weeks prior to the hearing to compensate Ms. Mugleston for missed work time while she testified in an Oregon proceeding, 8) the change in Ms. Mugleston's BRA RHA duties after March 2002 when Scott Vonhatten became her lead, 9) the denial of shift turnover information after Scott Vonhatten became her lead, and 10) the ongoing statements and acts comprising Ms. Mugleston's hostile work environment claim.

Ms. Mugleston filed her retaliation complaint on March 28, 2002. TR. 116-17. EG&G provided Ms. Mugleston a copy of her personnel file on February 26, 2002, at which time Ms. Mugleston discovered that EG&G had submitted several items of PDI about her. Because Ms. Mugleston filed her retaliation complaint thirty days after February 26, 2002, her complaint is timely with respect to the issue of PDI. Likewise, Ms. Mugleston filed her complaint three days after the hard hat incident occurred and well before April 8, 2002, the date she received the hard hat reprimand. Therefore, her complaint is timely with regard to the hard hat reprimand. In addition, Ms. Mugleston's complaint was filed before EG&G's December 2002 or January 2003 refusal to remove the hard hat reprimand from her personnel file. TR. 142, 167, 1250. Therefore, the Court will evaluate her claim also on that basis.

The April 2002 refusal to write Ms. Mugleston a letter of recommendation, the June 2002 suspension of Ms. Mugleston from the keyholding list, the August 2002 cancellation of her Utilities training, the failure to compensate Ms. Mugleston for her Oregon testimony shortly before the hearing, the change in Ms. Mugleston's BRA RHA duties after March 2002, and the denial of shift turnover information after March 2002 all also occurred after or within 30 days of the filing of Ms. Mugleston's complaint. TR. 93-97, 110-11, 115, 628-29, 166, 413-15, 724, 744, 1254, 1677-79. As such, the Court will consider these incidents in evaluating Ms. Mugleston's claim. Ms. Mugleston also alleged that she was subject to a hostile work environment based on a continual sentiment

at TOCDF by managers and employees that she was causing problems because she raised safety and environmental concerns. These allegedly discriminatory statements and actions continued through the time Ms. Mugleston filed her complaint, and therefore the Court also finds that Ms. Mugleston's complaint is timely with respect to her hostile work environment claim.

Ms. Mugleston asserts that her complaint is timely also with respect to a merit pay increase that she was not given upon being rehired as a BRA RHA operator after her layoff. TR. 99-100. The Court does not agree. Ms. Mugleston was re-hired as a BRA RHA Operator on October 8, 1999. TR. 257-58, 442-43; RX-33. Therefore, the original act of not giving Ms. Mugleston the merit increase took place over two years prior to the filing of her complaint. In October 2001, Ms. Mugleston raised the issue of this merit increase with EG&G, particularly Debbie Sweetie, by requesting that she be given the increase with back pay. TR. 100, 551-52, 1212-13. Ms. Sweetie informed Ms. Mugleston that EG&G was denying her request for a retroactive merit increase during a meeting on November 27, 2001. TR. 1220. Ms. Mugleston's March 28, 2002 complaint was filed about four months after this November 27, 2001 denial, and therefore her complaint is not timely with respect to the November 27, 2001 denial.

Ms. Mugleston asserts that her complaint is timely in relation to the merit increase because EG&G granted another employee, Scott Monsen, a retroactive pay raise in November 2002, well after Ms. Mugleston had filed her complaint. Ms. Mugleston asserts that Scott Monsen's retroactive raise constitutes ongoing adverse employment action toward her with respect to the merit increase. The Court finds no merit in her assertion. First, Ms. Mugleston's merit increase and Scott Monsen's merit increase are separate, unrelated actions. There is no evidence that one raise was exclusive to the other; the fact that Scott Monsen received a retroactive merit raise did not prohibit or prevent Ms. Mugleston from also receiving her merit increase, and vice versa. In addition, there is no evidence indicating that Ms. Mugleston's merit increase issue was even still under consideration by EG&G when EG&G decided to grant Scott Monsen his retroactive pay raise, so that in some way EG&G's award of the merit raise to Scott Monsen might reflect a renewal of its decision to reject Ms. Mugleston's raise. The fact that EG&G granted another employee a retroactive merit increase does not change that Ms. Mugleston was denied her request over 30 days before she filed her March 28, 2002 complaint. The fact that EG&G granted another employee a retroactive merit raise is not itself adverse to Ms. Mugleston's employment status.

B. PDI

The Court finds that EG&G's submission of PDI regarding Ms. Mugleston does not constitute an adverse employment action. Robert Rothenberg, the Army's Certifying Official for Ms. Mugleston in connection to the CPRP, explained that the Army maintains a Chemical Surety Program, whose purpose is to ensure that people who work

in positions that have access to chemical materials or weapons meet high standards of reliability. TR. 1094. PDI is information sent by an employer to notify the Certifying Official of any information that might reflect on an employee's reliability or ability to perform his/her duties in relation to the CPRP. TR. 1094-95. PDI is not necessarily negative information, but is any information reflecting on a change in a person's status. TR. 1095. The most common information comprising PDI is medical information, such as injuries, illnesses, or medication. TR. 1095.

The Certifying Official—and not EG&G—makes the decision if the PDI that is sent is disqualifying information. TR. 1096. Robert Rothenberg explained that he evaluates the PDI and puts the PDI in the shredder if the PDI has no bearing. TR. 1096-97. If PDI surfaces that the Certifying Official believes makes the employee's reliability questionable, then the employee is temporarily disqualified from the CPRP program. TR. 1101. The incident giving rise to the PDI is then investigated by the Certifying Official. TR. 1102. Based on the results of the investigation, the Certifying Official makes a determination either to remove the temporary disqualification and return the employee to the CPRP, or to permanently disqualify the individual. TR. 1102.

If the individual is permanently disqualified, then EG&G management and the individual are notified. TR. 1102. The individual is then given five days to respond to the charges for the permanent disqualification. TR. 1102-03. Based on this appeal, the Certifying Official may then elect to remove the disqualification and put the individual back in the program, or to continue with the permanent disqualification action. TR. 1103. If the permanent disqualification is upheld, then all the information related to that disqualification goes to the reviewing official, who will then either sustain or overturn the Certifying Official's decision. TR. 1103. EG&G is shut out of the decision-making process regarding an employee's CPRP status, except by submitting PDI. TR. 1124.

The transmission of PDI to a Certifying Official is not an unusual occurrence. Mr. Rothenberg oversees about 135 to 140 employees as a Certifying Official. TR. 160, 1094. Mr. Rothenberg explained that his general guidance for PDI is if there is uncertainty as to whether the information is PDI, then the sender should err on the side of disclosure and send the information as PDI to the Certifying Official. TR. 1096-97, 1126. With his 135 to 140 employees, Mr. Rothenberg receives about two items of PDI daily. TR. 1095. Mr. Rothenberg testified that he sometimes receives stacks of PDI, especially during the period of performance appraisals. TR. 1096.

Given the foregoing, the submission of PDI in and of itself does not affect Ms. Mugleston's employment status. In fact, PDI is commonly disclosed and is not even negative information necessarily, but also includes medical and familial information. Without an affirmative decision by the Certifying Official to act on the PDI, the PDI ends up in the shredder. Because the Certifying Official is the decision maker regarding any employment action based on PDI, and because the Certifying Official is an employee of

the U.S. Army rather than EG&G, the Court finds that EG&G is not taking adverse employment action against Ms. Mugleston when it submits PDI about her. EG&G simply does not have the power to affect Ms. Mugleston's employment status through PDI—that power belongs to the Certifying Official and other non-EG&G officials. EG&G's submission of PDI is merely an act of disclosure. Therefore, the Court finds that EG&G's submission of PDI regarding Ms. Mugleston is not adverse employment action.

The Court's finding does not mean that EG&G is free to submit PDI regarding Ms. Mugleston without discretion. As with all employment dealings, EG&G still must not submit PDI in a discriminatory manner. EG&G is not allowed to single out Ms. Mugleston or otherwise treat Ms. Mugleston unfairly with respect to the submission of PDI. Therefore, the Court will evaluate EG&G's submission of PDI regarding Ms. Mugleston on the basis of whether the process has been discriminatory compared to EG&G's submission of PDI regarding other employees.

C. Other "Tangible" Adverse Employment Actions

The Court finds that the hard hat reprimand issued to Ms. Mugleston on April 8, 2002 does constitute an adverse employment action. The reprimand was placed for one year into Ms. Mugleston's main personnel file, which was viewable by managers, and prevented Ms. Mugleston from being considered for one year for position openings at EG&G. TR. 1248-49, 1255-56, 1325, 1329-30. Likewise, EG&G's December 2002 or January 2003 denial of Ms. Mugleston's request for removal of the hard hat reprimand constituted an adverse employment action because it maintained Ms. Mugleston's prohibition from consideration for new jobs. EG&G's April 2002 refusal of a letter of recommendation for Ms. Mugleston also harmed her chances of being hired for a new job at EG&G. The Court therefore finds that the letter of recommendation incident is another item of adverse employment action.

In June 2002, Ms. Mugleston was suspended from the keyholding list as a result of the Door 255 incident. Because this action stripped Ms. Mugleston of a job duty, the Court finds that it was an adverse employment action. The August 2002 cancellation of Ms. Mugleston's Utilities cross-training was also an adverse employment action because it was detrimental to Ms. Mugleston's advancement as an EG&G employee and to her chances of being hired in a new position. In addition, the failure during the weeks prior to the hearing to compensate Ms. Mugleston for work time missed while she testified in an Oregon proceeding was also an adverse employment action because it negatively affected Ms. Mugleston's compensation. The changes in Ms. Mugleston's BRA RHA duties and the denial to her of shift turnover information after March 2002 when Scott Vonhatten became her lead, were adverse employment actions because they diminished the quality and value of her position.

IV. Prima Facie Causal Connection Between Protected Activity and Adverse Actions

For the purposes of establishing a *prima facie* case of retaliation, the Court will assume Ms. Mugleston has established the requisite preliminary causal connection between her protected activity and the adverse actions taken against her. Because the Court finds that EG&G has submitted evidence sufficient to establish that the adverse actions taken against Ms. Mugleston were done for legitimate, nondiscriminatory reasons, and because the Court finds that Ms. Mugleston has not succeeded in demonstrating that these legitimate nondiscriminatory reasons were merely pretexts for retaliation, the issue of whether Ms. Mugleston has established the requisite causal connection is not critical to the analysis.

V. EG&G's Legitimate, Nondiscriminatory Explanations for the Adverse Actions Taken Against Ms. Mugleston

A. The Hard Hat Reprimand

With respect to Ms. Mugleston's April 8, 2002 hard hat reprimand, EG&G contends that Ms. Mugleston was given the reprimand because she in fact did not put on her hard hat after being reminded to do so, in violation of EG&G's safety procedures and policies. Ryan Taylor and Bruce Anderson, the two EG&G Safety Representatives involved, as well as Jason Wright, who also received a reprimand due to the hard hat incident, all testified that Ms. Mugleston was reminded by Ryan Taylor to put on her hard hat and that she refused to do so, stating she had a meeting to attend that night and did not want to mess up her hair. TR. 351-53, 367-68, 374, 399-400, 405, 923-24, 1021-22.

The testimony of Ryan Taylor, Bruce Anderson, and Jason Wright were generally consistent as to what took place in the hard hat incident. Mr. Anderson and Mr. Taylor testified that they were leaving TOCDF to go home when they encountered several people who were coming into the facility. TR. 363, 366-67, 378, 380-81, 1019-20. Mr. Anderson and Mr. Taylor testified that they told these people that they needed to wear their hard hats. TR. 378-79, 1019-20. As Mr. Anderson and Mr. Taylor proceeded onward to the exit of the facility, they encountered Jason Wright. TR. 363, 366-67, 380-81, 1021. Mr. Anderson, Mr. Taylor, and Mr. Wright testified that Mr. Wright was not wearing his hard hat and that Ryan Taylor told Mr. Wright to put on his hard hat. TR. 363-64, 366-67, 922-23, 1021. Mr. Wright indicated that he would put his hard hat after passing the entry gate, but ultimately did not do so. TR. 367, 922.

Mr. Anderson, Mr. Taylor, and Mr. Wright testified that after the encounter with Mr. Wright, Mr. Anderson and Mr. Taylor encountered Ms. Mugleston and Jeff Utley, who were also leaving the facility and who had walked up behind them. TR. 367, 380-81, 399-400, 923-24, 1021. Mr. Anderson testified that Ms. Mugleston was in the area

where she was supposed to wear a hard hat. TR. 405, 929. Mr. Anderson, Mr. Taylor, and Mr. Wright testified that Ms. Mugleston was not wearing her hard hat and that Ryan Taylor told her that she needed to wear her hard hat too. TR. 352-53, 367, 399-400, 923, 1021-22. Mr. Anderson, Mr. Taylor, and Mr. Wright testified that Ms. Mugleston responded that she would not put on her hard hat because she had a meeting to attend and did not want to mess her hair up. TR. 352-53, 368, 405, 924, 1021-22. Mr. Anderson and Mr. Taylor testified that Ms. Mugleston then commented that she thought the hard hat requirement was going to be lifted. TR. 368, 1022. Ms. Mugleston did not put on her hard hat. TR. 1022. Given the foregoing account of the hard hat incident, the Court finds that EG&G has produced evidence that it issued the hard hat reprimand to Ms. Mugleston for a legitimate nondiscriminatory reason: Ms. Mugleston violated safety procedures when she refused to put on her hard hat after being reminded to do so.

B. Late 2002/Early 2003 Refusal to Remove the Hard Hat Reprimand

Debbie Sweeting testified that she denied Ms. Mugleston's late 2002 or early 2003 request to have her hard hat reprimand removed from her file because it was EG&G's practice to maintain a disciplinary action in an employee's main personnel file for one year, during which time the employee was barred from consideration for open positions at EG&G. TR. 1250-51, 1255-56, 1329-30. With respect to Ms. Mugleston's assertion that Dennis Cook was granted an exception to this rule, Ms. Sweeting acknowledged that Dennis Cook was transferred from BRA RHA operator to PAS operator in 2002 despite having a disciplinary action in his main file. TR. 1249. Ms. Sweeting explained that at the time of the PAS operator opening, EG&G was attempting to fulfill an Army directive, resulting from budget negotiations in September 2002, to lay off 12 BRA RHA employees. TR. 1239-41, 1249, 1982. Ms. Sweeting testified that EG&G sought to place the 12 employees in other positions rather than laying them off. TR. 1249, 1982. Ms. Sweeting testified that Dennis Cook was found to be a certified PAS operator, and his transfer was approved by James Colburn, the General Manager at the time, based on the business need of preventing the layoff of BRA RHA operators. TR. 1249-50. Ms. Sweeting testified that Dennis Cook's discipline was still valid until its one year was up, despite Mr. Cook's position transfer. TR. 1250. The Court finds that Ms. Sweeting's explanation is evidence sufficient to establish that EG&G denied Ms. Mugleston's reprimand request for legitimate, nondiscriminatory reasons.

B. Refusal to Write Letter of Recommendation

Ms. Mugleston testified that in April 2002, she sought a letter of recommendation from Cliff Shaw, who was the senior control room operator at the time. TR. 100, 162. According to Ms. Mugleston, Mr. Shaw indicated that she had done an excellent job and that he would have no problem writing a letter of recommendation for her. TR. 100. Ms. Mugleston testified that Debbie Sweeting thereafter advised Mr.

Shaw not to write the letter of recommendation and that Mr. Shaw consequently did not write the letter. TR. 101.

With respect to the letter of recommendation issue, Ms. Sweeting provided a credible account of EG&G's standard practice regarding writing letters of recommendation. If a reference letter is for internal purposes and is based on a specific incident, in which the employee went above and beyond his/her duties, then it is encouraged by EG&G that managers submit such reference letters to the personnel file. TR. 564-65. However, if the reference letter is internal but is based only on general good work, then a reference letter is not encouraged. TR. 564-65. If the reference letter is for non-EG&G employees, then it is company policy for those instances to be referred to the HR department. TR. 564-65. Given that EG&G's standard practice was to discourage internal letters of recommendation, except if the letter was about a specific incident, Debbie Sweeting's testimony establishes that Ms. Mugleston's request for a letter of recommendation was refused for legitimate, nondiscriminatory reasons.

B. Suspension from Keyholding List After Door 255 Incident

Ms. Mugleston testified that she and Jeff Utley were carrying keys the night of the Door 255 incident. TR. 94. They were called to unlock Door 255 for an entry. TR. 94. After turning over the door to the entrants, Ms. Mugleston and Mr. Utley left to go unlock another door that they had been called to at the time. TR. 96. Ms. Mugleston testified that the entrants thereafter proceeded into the toxic area without waiting for the entrants' door guards. TR. 96. As a result, there was nobody guarding the door during the time of the entry to prevent any unauthorized access into the toxic area. TR. 96. This discrepancy was noticed by Steve Bracken, of the Environmental Department. TR. 96-97. An investigation was thereafter performed, during which time Ms. Mugleston was restricted from keyholding duties. TR. 97.

Tim Kutz outlined legitimate, nondiscriminatory reasons for Ms. Mugleston's suspension from the keyholding list. Mr. Kutz testified that after being informed of the Door 255 incident, Mr. Kutz in turn removed the key users, namely Ms. Mugleston and Mr. Utley, from the key list until the investigation was completed. TR. 408-09. Mr. Kutz testified that in order to sort out the Door 255 incident, Mr. Kutz had discussions with several keyholders to ensure that they were clear about the proper procedure for turning doors over to door guards. Mr. Kutz recalled that Ms. Mugleston and Mr. Utley were reinstated on the key list the next time a new key list was formulated. TR. 415. The Court finds that Ms. Mugleston and Mr. Utley's removal from the keyholding list while the Door 255 incident was being settled was a reasonable, legitimate course of action on the part of EG&G. Mr. Kutz's testimony that Ms. Mugleston and Mr. Utley were suspended from keyholding duties because they were part of an investigation into the Door 255 incident is evidence sufficient to establish that their suspension took place for legitimate, nondiscriminatory reasons.

B. Cancellation of Utilities Cross-Training

The Court finds that EG&G has produced evidence that Ms. Mugleston's Utilities cross-training was cancelled for legitimate, nondiscriminatory reasons. Scott Vonhatten testified that after becoming the BRA RHA lead in March 2002, he arranged with management the approval for BRA RHA operators to cross-train in the PAS. TR. 1672. Mr. Vonhatten arranged this training through Tim Olinger, who approved the PAS cross-training on the condition that it did not affect the BRA RHA operation and would not entail overtime. TR. 1676-77, 1712-13. Mr. Vonhatten testified that there was also some discussion about Utilities training, but that such training would occur only after the PAS training and certification were completed. TR. 1673. Mr. Vonhatten testified that Ms. Mugleston participated in the PAS cross-training but did not complete the training to certification. TR. 1675-76.

Mr. Vonhatten learned in mid-August 2002, that Ms. Mugleston had signed herself up for Utilities cross-training. TR. 1677-79. Mr. Vonhatten testified that in a heated discussion, he told Ms. Mugleston she was not to sign herself up for the Utilities training and admonished her that they had discussed that PAS certifications would be completed prior to even looking into doing Utilities training. TR. 1680, 1709-11. Tim Olinger testified that Ms. Mugleston's cross-training in Utilities was cancelled because she had signed up for the training on her own before completing the certification process for the PAS system. TR. 1831. Tim Olinger testified that when he came to TOCDF in 2001 as Operations Manager, there were many workers who scheduled their own training, including trips to the east coast to the central demilitarization facility. TR. 1830. Mr. Olinger testified that in order to gain control of when and where workers would go for cross-training, he indicated to the Training Department that he would approve and control all cross-training. TR. 1830. Mr. Olinger testified that he encouraged cross-training, but wanted certifications to show for it. The Court finds that the testimony of Scott Vonhatten and Tim Olinger establishes that EG&G had legitimate, nondiscriminatory reasons for cancelling Ms. Mugleston's Utilities cross-training, namely that Ms. Mugleston's Utilities training conflicted with the PAS training that had been arranged and with EG&G's overtime policy regarding cross-training.

B. Compensation for Oregon Testimony

Ms. Mugleston also asserted that she was not compensated by EG&G correctly for a day of missed work in response to a subpoena for testimony in Oregon. TR. 127-29. Debbie Sweeting testified that there was some hesitation in arranging for Ms. Mugleston to be paid for the Oregon testimony because Ms. Mugleston had not followed company policy in requesting the leave. TR. 1254-55. Specifically, Ms. Mugleston failed to submit the leave request and subpoena in advance of missing the work time and failed to receive approval for the missed work time in advance from her supervisor. TR.

1254-55. Ms. Sweeting testified that Ms. Sweeting nonetheless has arranged for Ms. Mugleston to be paid. TR. 1255. Based on Ms. Sweeting's testimony that Ms. Mugleston's leave request was improper, the Court finds that EG&G has produced evidence indicating that the delay in compensating Ms. Mugleston for the Oregon trip occurred for legitimate, nondiscriminatory reasons.

B: Change in BRA RHA Duties

Testimony from Ms. Mugleston, Jeff Utley, and Steve Land indicate that Scott Vonhatten did not assign Ms. Mugleston the same duties as other members of her BRA RHA crew. TR. 115, 594-95, 724. According to these witnesses, Ms. Mugleston has been given fewer assignments for keyholding and DPE backup entries and more assignments for escorting. TR. 115, 628-29, 724, 1949, 1955.

The Court finds that EG&G has produced evidence of legitimate, nondiscriminatory reasons for any changes to Ms. Mugleston's duties as a BRA RHA operator. While the BRA RHA crew usually performs the keyholding duties, keyholding is also part of the duties of the PAS, Utilities, CHB, Unpack, and anyone else in the CPRP program. TR. 423, 1682, 1720. Ms. Mugleston performed keyholding duties about every other day for the first few months after Scott Vonhatten became the BRA RHA lead. TR. 1682. Mr. Vonhatten testified that the CHB thereafter volunteered to perform the keyholding duties, as TOCDF was not processing munitions and work was slow for the CHB. TR. 424-26, 1682-83. Mr. Vonhatten testified that during agent processing, the CHB would probably revert to its own duties and the BRA RHA would once again carry the keys. TR. 1720. Mr. Vonhatten testified that Ms. Mugleston was still performing keyholding duties and that nothing prohibits Ms. Mugleston and Mr. Utley from carrying keys together. TR. 1723.

With respect to DPE emergency backup entries, these entries are usually performed by the DSA. TR. 1684. Mr. Vonhatten testified that he simply does not receive many calls for backup entries in Ms. Mugleston's work area. TR. 1683-84. He has received only 5 to 10 calls for backup entries involving the PAS or BRA RHA since he became the BRA RHA lead in March 2002. TR. 1683-84. Mr. Vonhatten testified that when he does get a call, he seeks to fill the request with someone with a good understanding of the entry involved. TR. 1684. Therefore, BRA RHA operators generally would not be called for DPE backup entries, unless the entry in question pertained to the BRA RHA.

With respect to escorting, Mr. Vonhatten testified that Ms. Mugleston is one of many workers he uses for escort duties. TR. 1702. Mr. Vonhatten acknowledged that during TOCDF's operations changeover, Mr. Vonhatten used BRA RHA operators for escorting duties more than PAS or Utilities operators. TR. 1703, 1724. Mr. Vonhatten explained that BRA RHA operators had fewer tasks during the changeover period while

the workload of PAS and Utilities operators generally is the same whether or not TOCDF is conducting agent operations. TR. 1703, 1724. Among the BRA RHA crew, Mr. Vonhatten tries to rotate the escorting duties. TR. 1703. Mr. Vonhatten testified that Ms. Mugleston and Mr. Utley were assigned more escorting duties during the time other BRA RHA operators underwent PAS cross-training. TR. 1703. Mr. Vonhatten testified that other BRA RHA operators likewise performed more escorting during the times Ms. Mugleston and Mr. Utley were cross-training for the PAS. TR. 1703. Mr. Vonhatten believed that overall, he has used Ms. Mugleston for escorting duties about the same as other BRA RHA operators. TR. 1703. Based on Scott Vonhatten's explanation of the changes in Ms. Mugleston's BRA RHA duties, the Court finds that EG&G has produced evidence that Ms. Mugleston's duties changed for legitimate, nondiscriminatory reasons.

B: Shift Turnover

Ms. Mugleston also asserted that Scott Vonhatten treated her unfairly because he failed on several occasions to give her shift turnover information. TR. 110. Mr. Vonhatten explained that a worker may occasionally miss shift turn over information if the worker is not present due to off-facility escorting duties. TR. 1670. In these cases, the worker will be informed of any information pertinent to the worker. TR. 1670. Based on the foregoing, the Court finds that EG&G has produced evidence indicating that Ms. Mugleston missed shift turnover on occasion due to legitimate, nondiscriminatory reasons.

VI. Ms. Mugleston's Rebuttal Evidence Regarding Adverse Actions and the Court's Final Assessment Regarding Intentional Discrimination

In the event an employer meets its burden of producing legitimate nondiscriminatory reasons for its adverse actions, the complainant must prove by a preponderance of the evidence that the employer intentionally discriminated. Jenkins at 15. To meet this burden, a complainant may prove that the legitimate reasons proffered by the employer were not the true reasons for its actions but instead were only pretexts for discrimination. Jenkins at 15. With respect to the issue of rebutting EG&G's proffered legitimate explanations, the Court will consider the entire record, including Ms. Mugleston's version of each specific adverse employment action and Ms. Mugleston's asserted reasons about why those actions occurred. The Court will also consider evidence regarding EG&G's attitude toward safety and environmental concerns as well as the statements and actions comprising Ms. Mugleston's hostile work environment claim as discussed below in Part VII. After considering all the evidence of discrimination in this case, the Court finds that the adverse employment actions related to Ms. Mugleston did not involve retaliation on the part of EG&G.

A. EG&G's Attitude Toward Safety and Environmental Concerns

Ms. Mugleston asserts that EG&G has a retaliatory attitude toward the raising of safety and environmental concerns. First, Ms. Mugleston points to evidence regarding EG&G's responses to her safety and environmental memorandums and to EG&G's conduct toward other employees who have raised concerns in the past. Second, Ms. Mugleston contends that EG&G during the months leading up to the Salt Lake City Olympics stressed production over safety, in pursuit of a bonus offered by the Army.

Ms. Mugleston testified that she received a very negative response to her safety and environmental memos to management. TR. 77. The Court disagrees. Ms. Mugleston testified that while EG&G management indicated her ideas and issues were very good, EG&G management felt that the procedures at issue were open to interpretation and that her safety and environmental concerns were not valid. TR. 77. Contrary to Ms. Mugleston's opinion, the Court finds that EG&G has responded satisfactorily to Ms. Mugleston's safety and environmental concerns, many of which had been disclosed and investigated before Ms. Mugleston raised her concerns. For example, EG&G ordered Industrial Hygiene testing in response to Ms. Mugleston's respiratory concerns in the MPF cool down area, and respirators are being used in that area while the testing and analysis are completed. TR. 1876-79. With respect to emergency generators, EG&G has added an additional generator and implemented a preventive maintenance plan to ensure that the generators will start up. TR. 1516, 1805-06. In addition, an ACAMS has been installed in the HDC bin enclosure to prevent agent releases, testing of LSS air hoses has been conducted more frequently, purge valves have been added to the LSS system to allow any agent contamination to bleed out of the system, Ms. Mugleston's concerns about tap gear and SCBA back packs have been largely corrected, and corrections to procedures have been made regarding many of Ms. Mugleston's other concerns. TR. 44-45, 293-94, 296, 298, 616-17, 697-98, 787, 859, 1388-89, 1401, 1814, 1827-28, 1846-48.

Although EG&G's safety culture is far from perfect, as indicated in the Army IG report regarding the July 15, 2002 agent exposure incident, CX-44, the Court finds that EG&G's safety culture is also far from retaliatory. The Court finds that EG&G has been responsible in encouraging employees to report safety and environmental issues. Despite testimony from Pat Vario, Von Taylor, Andy Harris, Larry Allen, and Steve Land indicating that EG&G at one time or another has not been receptive to their concerns, the Court finds that EG&G overall has a satisfactory attitude toward safety and environmental concerns. TR. 660-62, 900-02, 831-38, 849-50, 853-58, 1824, 1890-99. A survey of 212 EG&G employees conducted by the Department of Defense, Office of Inspector General in connection with the July 15, 2002 incident, indicated that 93% of the respondents were aware of EG&G's safety reporting procedures, 82% felt comfortable raising a safety concern to their supervisor, and 88% believed EG&G management encouraged the reporting of safety and health-related issues. CX-44, pp. 8-9. While the

IG's report revealed that there were communication problems between EG&G management and employees and that some employees were dissatisfied with how EG&G responded to their safety and hazard concerns, the Court finds that EG&G fared well regarding the issues most critical to evaluating EG&G retaliatory motivations: most of the employees surveyed felt comfortable reporting safety and hazard concerns and most believed that EG&G encouraged the reporting of safety and hazard concerns. CX-44, pp. 8-9.

Evidence in the record establishes that EG&G informs its employees that they should report safety and environmental concerns or unfair treatment immediately to a safety representative or their supervisor. TR. 371, 1028-30, 1210-11. If the employee feels uncomfortable doing so, then the employee may report the concern or unfair treatment to the next level of management, to the Human Resources department, or to EG&G's Corporate officials. TR. 371, 1210-11.

EG&G has a central day shift core safety committee and safety committees for each of the shifts. TR. 1752. The safety committees on each crew have about 8 to 10 members, while the central day shift core crew has more. TR. 1752. The safety committee engages in weekly meetings to discuss the status of issues that have been raised by employees, and the committee maintains a database to keep track of the progress on those safety issues. TR. 1752-53. EG&G also has recently implemented an additional safety measure, the Safety Concern and Improvement Program. TR. 1750. In order to promote specific solutions rather than general suggestions, the Safety Concern and Improvement Program seeks to have employees document concerns, work with their supervisors on a proposed corrective action, actually implement that corrective action if it is approved, and bring the issue to closure. TR. 1750-52. If the concern is brought to closure, the employee is entered into a drawing for incentives. TR. 1751.

With respect to ensuring environmental compliance, EG&G employs ten individuals in the Environmental Compliance Division of its Environmental Department, with one Environmental Shift Inspector per shift with the authority to stop operations if there is a noncompliance. TR. 1355. The Environmental Department roams the plant, performs environmental inspections, and audits TOCDF's operating record. TR. 1354. EG&G's Environmental Department performs on site self-inspections of TOCDF's various work areas and inspections of waste, scrutinizes inspections conducted by Operations, and inspects paperwork and recordkeeping at TOCDF. TR. 1356. These inspections are performed on a daily, weekly, monthly, quarterly, semi-annual, and annual basis. TR. 1356-57.

Even beyond EG&G, TOCDF has other layers of oversight for safety and environmental compliance. TOCDF is overseen by the Army's CMA, the successor to PMCD. TR. 1748. CMA personnel are always on-site at TOCDF and available to speak with EG&G employees. TR. 1363, 1748-50. There are also about 50 full-time Army

employees working in the immediate vicinity of TOCDF. TR. 1748-49. Officials from the State of Utah, DSHW, another regulatory body with oversight over EG&G's operations at TOCDF, also maintain a presence at TOCDF. TR. 1357-62. There are about 10 employees from DSHW who have unrestricted inspection authority at TOCDF and are typically around the plant and available to speak with EG&G employees. TR. 1362. In addition to the presence of these Army and DSHW officials, EG&G is required to report to the Army and DSHW any safety or environmental mishaps or any otherwise unusual occurrences at TOCDF. TR. 1361-64. There is no evidence suggesting that EG&G has ever failed to report any such incidents or that EG&G has concealed any such incidents in any way. TR. 1364, 1380-81, 1491, 1868-69.

A. Production Versus Safety Prior to the Salt Lake City Olympics

Ms. Mugleston also took issue with the attitude of EG&G's management regarding safety versus production during the months leading up to the 2002 Salt Lake City Olympic Games. Ms. Mugleston and other workers, including Steve Land, Pat Vario, and Andy Harris, opined that EG&G management was pushing production over safety in order to finish its munitions processing before the Olympics, in pursuit of a bonus offered by the Army. TR. 65, 599, 664, 844-45.

EG&G, pursuant to an objective of the Army to reduce the risks of terrorism subsequent to September 11, 2001, did indeed seek to complete processing of its GB stockpiles before the Olympics. TR. 1384, 1771-72. A bonus of \$750 per employee, regardless of position, was offered by the Army if the GB campaign was completed before the Olympics. TR. 1772. However, contrary to Ms. Mugleston's assertion that EG&G overlooked safety in pursuit of this bonus, the terms of this bonus entailed not only completing the GB agent processing, but also having a reportable injury rate of less than 3.5, no injuries causing lost time, no confirmed agent exposure to individuals, and no confirmed agent releases to the atmosphere. TR. 1385, 1772-73. In order to prevent workers from hiding injuries that would jeopardize the bonus, anyone who was identified as not reporting an injury during that period would be ineligible for the bonus. TR. 1772-73. Ultimately, the GB processing was not completed prior to the Olympics, but the employees nevertheless received this bonus. TR. 1385.

A second award incentive, in addition to EG&G's base contract compensation, offered to EG&G every six months by the Army likewise is tied to safety and environmental compliance. TR. 1852-54. This award fee is based on the following formula: 35% related to safety, 30% related to environmental compliance, 20% related to technical performance, and 15% related to cost to performance. TR. 1852-53. Given that these incentives are contingent on safety and environmental compliance, the Court finds that the incentives do not support a finding that EG&G has a retaliatory attitude toward employees who raise safety and environmental issues.

A. The Hard Hat Incident

Ms. Mugleston and Mr. Utley's account of what occurred during the hard hat incident is decidedly different from EG&G's version of events. Based on inconsistencies in the testimony of Ms. Mugleston and Mr. Utley, the Court finds that the evidence weighs in favor of finding that Ms. Mugleston indeed did fail to put on her hard hat after being reminded to do so by Ryan Taylor. Ms. Mugleston and Mr. Utley testified that they were leaving the facility when they heard Ryan Taylor and Bruce Anderson ask a group of individuals to put on their hard hats. TR. 89, 672. According to Mr. Utley, neither Ryan Taylor nor Bruce Anderson spoke to him or Ms. Mugleston during the incident. TR. 673. Contrary to Mr. Utley's testimony however, Ms. Mugleston testified that she had a conversation exchange with both Ryan Taylor and Bruce Anderson.

Ms. Mugleston testified that when she and Mr. Utley were approached by Ryan Taylor, she asked Ryan Taylor whether the hard hat policy was going to be changed. TR. 89-90. Ms. Mugleston testified that Ryan Taylor indicated the procedure was not going to be changed. TR. 91. Ms. Mugleston testified that she then jokingly asked Bruce Anderson whether he was going to have the procedure changed. TR. 91. According to Ms. Mugleston, Bruce Anderson indicated he was not pursuing the issue. TR. 91. Based on the foregoing, Ms. Mugleston and Mr. Utley's testimony was inconsistent regarding the most relevant part of the hard hat incident: the conversation or lack thereof between Ms. Mugleston and the safety representatives.

Even looking past this inconsistency, the Court finds Ryan Taylor, Bruce Anderson, and Jason Wright's version of events more believable. Ms. Mugleston testified that just prior to encountering Ryan Taylor and Bruce Anderson, the safety representatives had warned other individuals to wear their hard hats. Ms. Mugleston testified also that she thereafter engaged in a conversation with the safety representatives about the requirement to wear hard hats while she herself was not wearing her hard hat. Given that the safety representatives had just warned others about wearing hard hats, the Court finds it much more believable that one of the safety representatives, while conversing with Ms. Mugleston about the hard hat policy, would have at least pointed out to Ms. Mugleston that she also was not wearing her hard hat.

In addition, Ms. Mugleston's testimony was internally inconsistent. Ms. Mugleston testified before the Court that on March 25, 2002, she did not understand that not wearing a hard hat inside the double fence after being reminded to do so was a safety violation. TR. 2018-19. The Court finds this testimony irreconcilable with Ms. Mugleston's testimony that she asked Ryan Taylor and Bruce Anderson whether the hard hat policy was going to be changed, so that workers would not be required to wear dirty hard hats on their way out of TOCDF after showering. TR. 89-91. In addition, during her deposition, Ms. Mugleston testified that she was aware that the policy two weeks before the hard hat incident was to wear a hard hat in all places inside the double fence

and that not wearing a hard hat inside the double fence after being reminded to do so is a safety violation. TR. 2019-21. Clearly, Ms. Mugleston was aware of the hard hat policy at the time of the incident, and her explicit testimony otherwise causes the Court to doubt the veracity of her version of the hard hat incident altogether.

The Court also finds that there were no pretexts or illegitimate actions involved in issuing the reprimand to Ms. Mugleston. Ms. Mugleston asserts that she was subject to disparate treatment regarding the reprimand because in many instances employees and managers are found not wearing a hard hat on the job site and are not reprimanded or even questioned. TR. 142. Jeff Utley, Pat Vario, Cliff Lee, Von Taylor, Jason Wright, Bruce Anderson, and Ryan Taylor all likewise acknowledge that it is not unusual for employees or managers to forget to wear their hard hats or safety glasses. TR. 359, 370-71, 659, 675, 883-84, 897-98, 926, 1027. However, there is no evidence that such individuals were not disciplined if they did not put on their hard hat after being reminded to do so. Indeed, Jason Wright was issued a reprimand in connection to the hard hat incident for failing to wear his hard hat after being reminded to do so. TR. 922-23. The evidence establishes that when a worker forgets to wear an article of safety gear, it is customary to remind the individual to put on his/her gear. TR. 371, 932, 1027-28. If the individual puts on the gear after being reminded, then the individual will not get in trouble. TR. 370. The instances in which an employee simply forgets to wear safety gear is distinguishable from Ms. Mugleston's circumstances because Ms. Mugleston failed to wear her safety gear, even after being reminded to do so.

Ms. Mugleston also contended that there was a conspiracy involved in the issuance of her hard hat reprimand. Ms. Mugleston testified that she spoke to Bruce Anderson in EG&G's water bottle room in April 2002 after unsuccessfully trying to call Mr. Anderson at home. TR. 120, 166. According to Ms. Mugleston, she and Mr. Anderson spoke in the water bottle room privately because Mr. Anderson had indicated he did not want to speak to Ms. Mugleston in front of the other workers. TR. 120. Ms. Mugleston testified that Mr. Anderson revealed to her that Mr. Anderson never heard Ryan Taylor tell Ms. Mugleston to put on her hard hat. TR. 121. Ms. Mugleston testified that Mr. Anderson told her that EG&G management had been trying to get him to call her at home and tape record the conversations. TR. 121. According to Ms. Mugleston, Mr. Anderson indicated that he declined participating in that way because he did not want to pick sides and did not want to get involved in the hard hat situation. TR. 121-22. Ms. Mugleston testified that Mr. Anderson indicated he wanted to warn Ms. Mugleston that management was out to get her and wanted to nail her to the cross. TR. 122. Ms. Mugleston testified that Mr. Anderson told her that EG&G management personnel had been directed to request that Ms. Mugleston record her concerns in memorandum form so that her concerns could be documented and held against her. TR. 122.

Mr. Anderson's testimony about the water bottle room conversation, on the other hand, revealed no illegitimate conduct on the part of EG&G regarding the hard hat affair. Mr. Anderson testified that the water bottle room conversation took place after Ms. Mugleston had called his house several times, causing his wife to be concerned. TR. 353, 355. Mr. Anderson denied wanting to talk to Ms. Mugleston outside the view of management or being concerned that management would see him talking to Ms. Mugleston. TR. 355-56. Mr. Anderson explained that he and Ms. Mugleston spoke in the water bottle room because Ms. Mugleston preferred to have a different setting and the water bottle room seemed like a neutral place. TR. 355-56. Mr. Anderson testified that in the conversation Ms. Mugleston sought to assure him that she did not have anything personal against him and that her dispute over the hard hat incident was not about him. TR. 353-54. Mr. Anderson testified that he told Ms. Mugleston that he wrote a statement for the human resources department about the incident that was probably very damaging to her. TR. 354. Mr. Anderson testified that he and Ms. Mugleston were interrupted by another employee and that he did not recall much more of the meeting. TR. 354.

Mr. Anderson testified that he did not say anything to Ms. Mugleston regarding his desire, or lack thereof, to talk to her in the future. TR. 354-55. Mr. Anderson also testified that management has never asked him to call Ms. Mugleston or to tape record conversations with Ms. Mugleston. TR. 355. Mr. Anderson testified that he never told Ms. Mugleston or anyone else that management was after Ms. Mugleston, trying to nail her to the cross or otherwise. TR. 357, 374. Mr. Anderson testified that he did not know what EG&G management's intent was regarding Ms. Mugleston. TR. 357, 374. The Court finds Mr. Anderson to be a credible witness. Mr. Anderson's testimony about his statements during the water bottle room conversation directly contradicts Ms. Mugleston's testimony about what Mr. Anderson said. In the Court's judgment, Mr. Anderson's testimony is more credible than Ms. Mugleston's self-interested testimony.

Bobbie Earp testified that she heard Barry Williams say he was asked by EG&G to conspire against Ms. Mugleston. TR. 766. The Court finds that Ms. Earp's testimony is unfounded. Ms. Earp testified that Barry Williams told her that he had received a phone call at home asking him if he would change his story about the reason he was not wearing a hard hat. TR. 766. However, Barry Williams himself testified that no EG&G manager asked him to alter his version of the hard hat incident in any way. TR. 813, 817-18. Mr. Williams testified that he never told anyone he was asked to change his story or statement. TR. 818. Mr. Williams explained that Tim Olinger, due to a mix-up, believed that Mr. Williams had also failed to wear his hard hat during the incident. TR. 812-15. According to Mr. Williams, the mix-up was cleared up after an in-person meeting. TR. 812-15, 821-22. The Court finds that the record does not support a finding that EG&G conspired against Ms. Mugleston regarding the hard hat incident.

In addition, the details of the investigation of the hard hat incident provided by Debbie Sweeting, Bruce Anderson, Ryan Taylor, Tim Olinger, Barry Williams, and Jason

Wright satisfy the Court that the hard hat investigation was undertaken in a regular and fair manner. Ryan Taylor reported in a managers meeting the morning after the hard hat incident that he had witnessed several individuals not wearing their hard hats and that managers and supervisors should be more conscientious about the issue. TR. 1023-24. After doing so, Tim Olinger wanted to know the names of the individuals involved. TR. 1024. An investigation was thereafter conducted by Debbie Sweeting and Tim Olinger. TR. 1277, 1914. Bruce Anderson, Ryan Taylor, Jason Wright, Jeff Utley, and Ms. Mugleston all were asked to meet with Ms. Sweeting and Mr. Olinger and to provide written statements. TR. 362, 397-98, 1026, 1048-49, 1281-86, 1289, 1914. Because Jeff Utley and Ms. Mugleston had a different version of what happened compared to the other individuals, Ryan Taylor and Bruce Anderson were interviewed a second time. TR. 1290. After discussing the matter with Ryan Taylor and Bruce Anderson a second time and being reassured that Ms. Mugleston had in fact failed to put on her hard hat after being reminded to do so, Debbie Sweeting, Tim Olinger, and Jimmy Clark agreed that Ms. Mugleston should be issued a reprimand. TR. 1225-26, 1290-94. The Court accepts that the hard hat investigation occurred in this manner, and the Court finds that the hard hat reprimand was not issued on illegitimate grounds.

A. Late 2002/Early 2003 Refusal to Remove the Hard Hat Reprimand

In Ms. Mugleston's late 2002 or early 2003 request for her hard hat reprimand to be removed from her personnel file, Ms. Mugleston cited Dennis Cook being allowed to apply for a PAS opening despite having two reprimands in his personnel file at the time. TR. 142, 167. Ms. Mugleston asserts that EG&G's refusal to remove the hard hat reprimand from her file constituted disparate treatment.

The Court finds that EG&G's denial of Ms. Mugleston's request to remove the hard hat reprimand from her file did not involve pretexts and was not done on a discriminatory basis. Keeping Ms. Mugleston's reprimand active for one full year and barring her from consideration for new positions at EG&G was consistent with EG&G procedures. TR. 1255-56, 1329-30. Although Dennis Cook was granted an exception regarding his transfer from the BRA RHA to the PAS, Mr. Cook's transfer was carried out to fulfill a business need, so that EG&G could avoid lay offs of BRA RHA workers. TR. 1249-50. Therefore, Mr. Cook's situation is distinguishable from Ms. Mugleston's situation. In addition, Mr. Cook's disciplinary action remained active for the full year, as was done in Ms. Mugleston's case.

A. Refusal to Write Letter of Recommendation

Ms. Mugleston also asserted that EG&G's April 2002 refusal to allow a letter of recommendation to be written for Ms. Mugleston constituted discriminatory treatment. TR. 100-01. The Court finds that there was no discriminatory treatment of Ms. Mugleston with respect to the letter of recommendation incident. Debbie Sweeting

testified that Cliff Shaw called her and asked her about the company policy regarding writing reference letters. TR. 564. Ms. Sweeting testified that she gave Mr. Shaw the standard answer she gives to everyone. TR. 564-65. There is no evidence indicating that Cliff Shaw's decision not to write the letter of recommendation for Ms. Mugleston was based on anything other than EG&G's standard policy. Therefore, the Court finds that Ms. Mugleston has failed to establish that she suffered discrimination in relation to the letter of recommendation issue.

A. Suspension from Keyholding List After Door 255 Incident

Ms. Mugleston and Mr. Utley testified that in June 2002, after the Door 255 incident, Tim Kutz told them that management was trying to pin the incident on them, despite the fact that they did nothing wrong in the incident. TR. 123-24, 708-09. Mr. Kutz, on the other hand, testified that he did not know what the approach of management was in regard to Ms. Mugleston and Mr. Utley and the Door 255 incident. TR. 414. Mr. Kutz testified that he never mentioned to Ms. Mugleston or Mr. Utley that management was after them or had a vendetta against them. TR. 414-16. Mr. Kutz also testified that he did not tell Ms. Mugleston that management was trying to pin the Door 255 incident on her. TR. 415. Mr. Kutz testified that he told Ms. Mugleston and Mr. Utley only that if they were worried about management seeking them out, then they would be fine if they simply adhered to the procedures because EG&G is a compliance driven company. TR. 414-16. Mr. Kutz testified that he told Ms. Mugleston that if the keyholding procedures were not working, then the procedures could be changed to more accurately reflect how things were actually done. TR. 414-15. Mr. Kutz testified that he made these comments during the same type of conversation he had with other workers about understanding the keyholding procedure. TR. 417. Neither Tim Kutz, Tim Olinger, nor Steve Wallace opined that Ms. Mugleston and Mr. Utley would be disciplined for the Door 255 incident, aside from the temporary removal of their keyholding duties that occurred while the Door 255 was being investigated. TR. 413, 420, 1648-49, 1929-30.

First, the Court finds that removing Ms. Mugleston and Mr. Utley from the keyholding list while the Door 255 incident was being investigated was a legitimate course of action and reasonable given that keyholding is a surety concern. Ms. Mugleston and Mr. Utley were reinstated after the matter was cleared up, and the Court finds that EG&G did not act in a disparate manner with respect to the Door 255 incident. Second, with respect to the conversations between Tim Kutz and Ms. Mugleston, the Court finds Mr. Kutz's testimony credible. The testimony of Ms. Mugleston, on the other hand, is self-serving, and the significance that her testimony is supported by the testimony of her fiancé is of limited value, when their testimony contradicts credible testimony and is otherwise unsupported in the record. Notwithstanding the Court's observation of the witnesses, the Court finds very telling the fact that EG&G has not and does not intend to discipline Ms. Mugleston and Mr. Utley or anyone else for the Door 255 incident. Aside from the testimony of Ms. Mugleston and Mr. Utley, there is no

evidence EG&G ever intended to do so. The reality of the situation is consistent with Tim Kutz's testimony and not with Ms. Mugleston's assertion that EG&G sought to discipline her and Mr. Utley for the Door 255 incident. Therefore, the Court is satisfied that there was no discrimination involved in the Door 255 incident.

A. Cancellation of Utilities Cross-Training

Ms. Mugleston and Mr. Utley testified that they had requested and received approval for Utilities cross-training from Coy Cole, the Training Manager, and Burke Leatham, the Plant Shift Superintendent at the time. TR. 92, 694-95. Ms. Mugleston testified that she requested the Utilities training prior to starting her PAS training. TR. 2002. Ms. Mugleston testified that her lead, Scott Vonhatten, thereafter found out she had scheduled the training. TR. 92-93. According to Ms. Mugleston and Mr. Utley, Scott Vonhatten cancelled their training and yelled at them, using foul language and saying that they were not allowed to schedule their own training without his prior approval. TR. 92-93, 694-95, 1996.

Even assuming that Ms. Mugleston had received approval from Coy Cole and/or Burke Leatham, EG&G's cancellation of her Utilities training was nevertheless based on legitimate grounds. EG&G's cancellation of the Utilities training was not based on whether or not Ms. Mugleston had received permission from Coy Cole and/or Burke Leatham. Instead the cancellation was made because the Utilities cross-training conflicted with Scott Vonhatten and Tim Olinger's arrangement for BRA RHA operators to fully complete PAS cross-training before beginning training in another area. TR. 1672-77, 1709-13, 1830-31. Only BRA RHA operators who have completed their PAS training were allowed to begin Utilities training. TR. 1681, 1716. The Court finds that the decision to fully complete one area of training before starting a new area is reasonable, both with respect to promoting certifications and controlling overtime and scheduling. In addition, the fact that Ms. Mugleston scheduled the Utilities training before the PAS training began is not significant. The issue of when exactly Ms. Mugleston signed up for Utilities training ultimately does not change the fact that the Utilities training conflicted with the training arrangement to complete PAS training before beginning Utilities training. There is no evidence suggesting that EG&G would have permitted any BRA RHA operator to begin Utilities training prior to completing PAS training, regardless of when the individual signed up for Utilities training. Ms. Mugleston still has the opportunity to complete the PAS cross-training any time she is available. TR. 1703-04. She may thereafter begin Utilities training. TR. 1703-04. The Court finds that there was no discriminatory treatment of Ms. Mugleston regarding this incident.

A. Compensation for Oregon Testimony

Ms. Mugleston testified that she submitted her time card and leave request for her subpoena to Oregon, but was told by her Plant Shift Manager, Scott Sorenson, that she was not going to be paid for the court leave. TR. 127-28. Ms. Mugleston testified that she insisted the leave should be covered according to the employee handbook. TR. 127-28. Ms. Mugleston testified that Debbie Sweeting thereafter indicated that Lois Baar had advised Ms. Sweeting that Ms. Mugleston should not be paid for the Oregon court time. TR. 128. The Court finds that this issue has been resolved, as EG&G has arranged for Ms. Mugleston to be compensated for the missed day of work. TR. 1255. The Court also accepts Debbie Sweeting's explanation that Ms. Mugleston's compensation was delayed because Ms. Mugleston did not follow company procedures in requesting the leave compensation. Ms. Mugleston has failed to refute Ms. Sweeting's explanation. Therefore, the Court finds that no discriminatory conduct took place regarding this issue.

A. Change in BRA RHA Duties

The Court finds that EG&G did not intentionally discriminate against Ms. Mugleston with respect to any changes in her BRA RHA duties. The Court accepts Scott Vonhatten's explanation that Ms. Mugleston's duties changed for a time due to legitimate company reasons. First, Ms. Mugleston was assigned less keyholding duties because the CHB volunteered to perform the task to supplement its low work load during TOCDF's changeover to VX operations. Second, Ms. Mugleston has not been assigned DPE backup entries because there simply have not been many backup entries related to the BRA RHA. Third, Ms. Mugleston was assigned for a time more escorting duties because other BRA RHA operators were undergoing PAS training, just as other BRA RHA operators would have to cover for Ms. Mugleston while she attended PAS training. Although Ms. Mugleston's duties may have changed, the changes happened for legitimate reasons, due to the PAS training and the larger changeover in operations taking place at TOCDF, which affected the duties of the entire BRA RHA crew as well as the duties of TOCDF's other work areas.

There is little evidence to refute Mr. Vonhatten's testimony that Ms. Mugleston's duties were changed only in a manner consistent with the other members of her crew. Steve Land testified that Ms. Mugleston performed escorting duties for a longer duration compared to other members of her crew, explaining that other BRA RHA operators were relieved every two hours during escort duties while Ms. Mugleston and Mr. Utley performed escorting duties without being relieved. TR. 1955. However, the Court finds that Steve Land as a PAS operator since late 2002, would not have been in a position to make a reliable assessment of Ms. Mugleston's duties as a BRA RHA operator. TR. 591. Mr. Land is not part of Ms. Mugleston's BRA RHA crew, much less in a position to certify to a meaningful degree Ms. Mugleston's comings and goings. After reviewing the evidence, the Court finds that the manner in which Scott Vonhatten assigned duties to

BRA RHA operators was not discriminatory and that there is insufficient evidence to demonstrate that Ms. Mugleston's assignments were appreciably different than other workers on her crew.

A. Shift Turnover

Ms. Mugleston also asserted that she suffered disparate treatment because she was denied shift turnover information on several occasions. TR. 110. The Court finds that there is no evidence of discrimination regarding the lack of shift turnover. The Court accepts Scott Vonhatten's explanation that shift turnover will sometimes be missed by an employee who is performing escorting duties off-site. TR. 1670. His explanation is largely in line with Ms. Mugleston's own account of the situation. Ms. Mugleston testified that Mr. Vonhatten sometimes would provide shift turnover information to the other members of the BRA RHA crew, but would send Ms. Mugleston off-facility for escorting duties at Battelle. TR. 111. There is no evidence indicating that Ms. Mugleston missed shift turnover any more frequently than other members of her crew or that she missed shift turnover for a reason other than being off-site for escorting duties.

Ms. Mugleston also testified that she entered a restricted area on one occasion because she was not notified through shift turnover that an area had been downgraded from Category "C" to Category "B." TR. 111. The Court finds that Ms. Mugleston's self-interested testimony regarding the existence of this incident is not supported by the record. There is no corroborating evidence that such an incident took place. On the contrary, Scott Vonhatten testified that he did not recall Ms. Mugleston entering a Level "B" area that had been downgraded from a Level "C" area at any time after he became the BRA RHA lead. TR. 1670. Jeff Utley, Tonya Elkington, Scott Vonhatten, and Tim Olinger all testified that door guards are posted to control access to an area when the area is downgraded from Category "C" to Category "B." TR. 1409, 1670, 1835, 1974-75. Given that there is no evidence corroborating Ms. Mugleston's testimony about the existence of such an incident and that the security measures enacted when a Category "C" area is downgraded to Category "B" make such an occurrence unlikely, the Court finds that the evidence does not support a finding that such an incident took place.

Based on the foregoing analysis, and in consideration of the evidence below comprising Ms. Mugleston's hostile work environment claim, the Court finds that EG&G acted with legitimate reasons in taking adverse employment actions against Ms. Mugleston and that EG&G did not have retaliatory motivations for taking such actions.

VII. Hostile Work Environment Claim

Ms. Mugleston has introduced evidence of several statements and incidents related to her hostile work environment claim. The Court summarizes that evidence as follows: 1) Debbie Sweeting calling Ms. Mugleston a "whistleblower;" 2) management being

advised not to speak to Ms. Mugleston about her safety and environmental concerns; 3) disregard by Tim Olinger of Ms. Mugleston's September 1998 settlement; 4) Ms. Mugleston's treatment in regard to her January 2002 meeting with management; 5) Steve Wallace's close surveillance of Ms. Mugleston; 6) Steve Wallace reacting onerously after Ms. Mugleston asked him about a procedure during a meeting; 7) Steve Wallace reacting angrily in connection with the XRF Room incident; 8) Scott Vonhatten reacting angrily in connection to the barricade tape incident; 9) the ethics training given by EG&G attorneys; 10) reclassification of the BRA RHA operator position under the Service Contract Act; and 11) negative comments and sentiments by various EG&G employees.

The negative comments and sentiments included: Steve Wallace commenting that Ms. Mugleston's safety and environmental concerns have hampered EG&G's operations; Steve Wallace questioning Ms. Mugleston about rumors that she had started a petition to shut down TOCDF; Steve Wallace commenting that Ms. Mugleston was a "celebrity" after her media appearance; comments by Marty Ahlstrom and Tom Duffield in area newspapers after Ms. Mugleston's media appearance; comments by Jerry Safrans and Sid Lawrence over TOCDF's radio system; comments on bathroom walls; comments by John Cafe; comments by Darren Hendrix; and rumors circulating TOCDF about Ms. Mugleston and Mr. Utley. Other remarks were reportedly made by Larry Allen, Darryl Drewery, Lynn Carlson, Herman Candelaria, Scott Vonhatten, Ray Bell, Sarah Muir, Sue Renzello, Erv Hillman, Mike Green, Steve Land, and Brett Pfeiffer. TR. 104, 340-41, 621-22, 776-79, 838-39, 877-79, 1626-29. In addition, the Court will take into account the evidence regarding Ms. Mugleston's tangible adverse employment actions, as discussed in above in Parts V and VI, when considering her hostile work environment claim. The Court will also consider two items which do not themselves qualify as timely adverse employment actions, but are nonetheless relevant to Ms. Mugleston's hostile work environment claim: EG&G's submission of PDI and the denial of Ms. Mugleston's merit increase.

After considering all the evidence of discrimination in this case, including the adverse employment actions taken against Ms. Mugleston in aggregate, the evidence regarding EG&G's attitude toward safety and environmental concerns, and all the evidence of hostility towards Ms. Mugleston, the Court finds that the antagonistic statements and actions relating to Ms. Mugleston in this case do not amount to a hostile work environment.

A. Ms. Mugleston Called a "Whistleblower" by Debbie Sweeting

The Court finds that Ms. Mugleston's allegation that she was called a "whistleblower" by Debbie Sweeting is not supported by the evidence and does not otherwise constitute intentional discrimination. According to Ms. Mugleston, Debbie Sweeting on one occasion indicated that Ms. Mugleston had to speak with the company attorney, because all "whistleblowers" who raised concerns needed to speak with the

company attorney. TR. 85. Debbie Sweeting, on the other hand, testified that other than saying “whistleblower complaint,” she did not recall using the term “whistleblower” in her conversations with Ms. Mugleston. TR. 547-48.

Although other witnesses testified regarding this incident, their testimony is unreliable and/or conflicting. Jeff Utley testified that David Palmer, after attending a meeting with Ms. Mugleston and Ms. Sweeting, told him that that Debbie Sweeting had called Ms. Mugleston a “whistleblower.” TR. 739. According to Mr. Utley, David Palmer reported that Ms. Sweeting told Ms. Mugleston that all “whistleblowers” have to speak to the company attorneys. TR. 739-40. However, in contrast to Jeff Utley’s testimony, David Palmer testified that he was told by Ms. Mugleston that Debbie Sweeting called Ms. Mugleston a “whistleblower,” but Mr. Palmer himself did not hear such a remark. TR. 335-36. Given that Mr. Utley’s testimony is contradicted by Mr. Palmer’s testimony and that Mr. Palmer’s testimony amounts only to corroboration that Ms. Mugleston herself believed Debbie Sweeting called her a “whistleblower,” the Court finds that the testimony of Jeff Utley and David Palmer regarding this alleged incident is not helpful. Bobbie Earp also testified that she has heard Ms. Mugleston referred to as a “whistleblower,” but Ms. Earp could not recall who said it. TR. 794. Ms. Earp’s vague testimony does not help to establish that Ms. Sweeting did in fact call Ms. Mugleston a “whistleblower.” Therefore the Court finds that Ms. Mugleston has failed to prove that Ms. Sweeting did call her a “whistleblower.”³¹

B. Management Was Advised Not to Speak with Ms. Mugleston

Ms. Mugleston testified that during a meeting some time after November 27, 2001, Ms. Sweeting told Ms. Mugleston that Ms. Sweeting and Tim Olinger had been advised by EG&G’s attorneys, Stuart Young and Lois Baar, to no longer speak with Ms. Mugleston regarding Ms. Mugleston’s safety and environmental concerns. TR. 154-55.

³¹ Even assuming Ms. Sweeting did refer to Ms. Mugleston as a “whistleblower” during the conversation referred to by Ms. Mugleston, Ms. Sweeting’s testimony regarding that conversation supports a finding that the remark would not have been made in a derogatory manner. Ms. Sweeting testified that she did advise Ms. Mugleston at one point to talk to EG&G’s corporate attorney, Stuart Young. TR. 549. Ms. Sweeting explained that she advises many employees who are considering outside counsel for complaints against management or safety and environmental complaints to go through EG&G’s process first in order to determine if the problem can be resolved internally, without the employee undergoing unnecessary expenses. TR. 549-50. Ms. Sweeting testified that she wants employees to know there is an avenue they can undertake for such complaints. TR. 549. Ms. Sweeting testified that she has never told any employees, including Ms. Mugleston, that they need to first go to the corporate attorney before seeking help outside of the company. TR. 550. The Court finds that Ms. Sweeting is a credible witness and accepts her version of the conversation. If she did refer to Ms. Mugleston as a “whistleblower” during this conversation as Ms. Mugleston alleges, the Court finds that the utterance would have been a mere offensive remark, and not a remark intended to humiliate Ms. Mugleston. Given that the intent of the conversation was for Ms. Sweeting to inform Ms. Mugleston of an alternative avenue for resolving her retaliation complaints, the remark would have been made in the context of being informative rather than demeaning. Even if the remark was made, the Court finds that Ms. Mugleston has nonetheless failed in her hostile work environment claim, because this remark viewed in aggregate with the other evidence of discrimination in this case still is not sufficient to establish that Ms. Mugleston suffered from a hostile work environment.

Ms. Sweeting acknowledged that at some point Ms. Sweeting was advised by Stuart Young not to make deals or talk about specifics issues with Ms. Mugleston. TR. 561. Ms. Sweeting was given this advice because Ms. Mugleston had gotten representation through an attorney, and Stuart Young indicated that Ms. Mugleston would have to communicate through her attorney to the company attorney. TR. 561. After about one month, Ms. Mugleston testified that she received a phone call from Ms. Sweeting indicating that Ms. Sweeting and Mr. Olinger could again speak with Ms. Mugleston, as EG&G's attorney had dotted all the "i's" and crossed all the "t's." TR. 155. The Court finds that there was a causal connection between Ms. Mugleston's protected activity and EG&G's temporary limits on speaking to Ms. Mugleston. However, the temporary limits were imposed not to threaten, harass, or humiliate Ms. Mugleston, but instead to ensure that Ms. Mugleston's legal rights were not infringed and that EG&G complied with its legal ethical obligations. The temporary limits also should not have interfered generally with Ms. Mugleston's daily duties as a BRA RHA operator, so that the temporary limits were not so intrusive as to create an abusive work environment.

C. Disregard for Complainant's Settlement by Tim Olinger

Ms. Mugleston testified that shortly after writing her safety and environmental memos, she spoke with Tim Olinger about her 1998 settlement. TR. 126. Ms. Mugleston testified that she told Mr. Olinger during that conversation that she felt retaliated against and unfairly treated in violation of her settlement. TR. 126. According to Ms. Mugleston, Mr. Olinger told her he did not care what her settlement set forth, that the settlement did not involve him, and that he did not want to hear about the settlement. TR. 126-27. Ms. Mugleston testified that Mr. Olinger's exact words were, "I don't give a sh--." TR. 127.

Tim Olinger acknowledged that he did indicate to Ms. Mugleston that her settlement did not matter to him. TR. 1833-34. Mr. Olinger explained that Ms. Mugleston's 1998 settlement was not of great importance to him because, irrespective of the settlement, Mr. Olinger does not expect anything different from Ms. Mugleston compared to any other employee and Mr. Olinger was not going to treat Ms. Mugleston any differently than he would any other employee. TR. 1834. Because Ms. Mugleston's previous settlement is related to safety and environmental concerns, the Court finds that a sufficient causal connection exists between Tim Olinger's remark and protected activity on the part of Ms. Mugleston. Although this remark may have had a negative tone, the remark was isolated and did not occur in the context of Ms. Mugleston's daily work routine so as to interfere with Ms. Mugleston's work performance. The Court finds that considering this remark along with all the evidence in this case suggesting discrimination, the sum effect does not amount to harassment sufficiently severe and pervasive so as to alter the conditions of Ms. Mugleston's employment and create an abusive work environment.

D. January 2002 Meeting with Management

Ms. Mugleston attended a meeting with Tim Olinger, Jimmy Clark, and Debbie Sweeting in January 2002 regarding Ms. Mugleston's safety and environmental concerns. TR. 82, 1221, 1829. After receiving a call from Debbie Sweeting requesting that Ms. Mugleston be notified of the meeting, Steve Wallace directed Erv Hillman to notify Ms. Mugleston that Ms. Mugleston was required at the meeting. TR. 1612-13, 1637-38. Ms. Mugleston indicated at that time that she did not want to go to the meeting because her lawyer had told her that she did not have to and because she was performing keyholding duties at the time. TR. 1613-14, 1633. Mr. Wallace testified that he told Erv Hillman that Ms. Mugleston did not have a choice about whether or not to attend the meeting and that Ms. Mugleston was required to turn in her keys. TR. 1615. Ms. Mugleston thereafter proceeded to the control room in response to Steve Wallace's directive. TR. 1615, 1634.

A heated conversation ensued between Ms. Mugleston and Mr. Wallace. TR. 1615-16, 1634-35. Ms. Mugleston informed Steve Wallace that she did not want to attend the meeting without representation. TR. 83-84, 134-35, 336. Mr. Wallace during the discussion used the term "insubordination" after Ms. Mugleston refused his specific directive to turn in her keys immediately. TR. 83, 1635. Mr. Wallace ultimately forcefully directed that Ms. Mugleston did not have a choice in the matter and that Ms. Mugleston would turn in the keys immediately. TR. 1616. Mr. Wallace explained that as Plant Shift Manager, he was responsible for controlling access to the keys, which are a surety matter. TR. 1615. Ms. Mugleston then turned in her keys and attended the meeting, but took along David Palmer as a witness. TR. 83, 1616, 1635-36.

The Court finds that the exchange between Ms. Mugleston and Steve Wallace regarding the January 2002 meeting did not constitute intentional harassment related to Ms. Mugleston's protected activity. Steve Wallace indicated that he was verbally forceful with Ms. Mugleston because Ms. Mugleston would not obey his directive regarding a surety concern, control of the keys. The Court finds that this surety concern was a legitimate basis for the heated disagreement between Steve Wallace and Ms. Mugleston. There is no evidence that Mr. Wallace treated Ms. Mugleston any differently in that situation than he would have if Ms. Mugleston had not engaged in protected activity. The Court likewise finds that there was no intentional harassment of Ms. Mugleston at the January 2002 meeting. On the contrary, the evidence indicates that the EG&G officials were sensitive to Ms. Mugleston's hesitation with attending the meeting, reassured Ms. Mugleston with the help of Stuart Young that the meeting was being held only to answer her October 2001 safety and environmental concerns, offered to reschedule the meeting to allow her to have representation present, allowed Ms. Mugleston to bring in a witness, and proceeded with the meeting only after everyone had consented to the meeting. TR. 83-84, 329, 543-44, 547-79, 1221, 1828-29. Therefore,

the Court finds that the January 2002 meeting did not contribute to hostility in Ms. Mugleston's work environment.

E. Ms. Mugleston Closely Watched by Steve Wallace

Ms. Mugleston took issue with the fact that BRA RHA operators were moved from their office to the lunch room, where the BRA RHA operators were susceptible to closer surveillance. Ms. Mugleston testified that Steve Wallace on several occasions would come in to the lunch room and check on the BRA RHA operators. TR. 105. Ms. Mugleston testified that Steve Wallace would also sneak up on workers to make sure they were not sleeping or otherwise behaving improperly. TR. 105. Jeff Utley likewise testified that Steve Wallace used to sneak around following him and Ms. Mugleston, wanting to know where they were at all times. TR. 725-26. In addition, Ms. Mugleston testified that about six or eight months before the hearing, Mr. Wallace singled her out while giving a tour of TOCDF to EG&G officials. TR. 105-06. According to Ms. Mugleston, Mr. Wallace pointed out Ms. Mugleston while talking to the officials. TR. 105-06.

The Court finds that this alleged close surveillance of Ms. Mugleston did not constitute intentional harassment related to Ms. Mugleston's protected activities. The evidence supports a finding that the overall supervision at EG&G became more strict, and not that Ms. Mugleston herself was singled out for closer supervision. EG&G underwent an inspection and audit by the Army Inspector General (IG) in the last quarter of 2001. TR. 1235-36. As a result of the inspection, the IG's office recommended changes to the BRA RHA. TR. 1236-37. These changes included more supervision of the BRA RHA and closure of the BRA area, which was not in operation and had become a place where employees would hang out, read, or sleep. TR. 1237-39. The IG's recommendations were adopted by PMCD and subsequently led EG&G's General Manager to issue a directive for EG&G management to become more strict about ensuring that workers were staying busy and not hanging around, sleeping, or reading on the job. TR. 1241, 1312-13, 1317-18. The Court finds that this directive led to closer scrutiny of EG&G employees generally, and not just Ms. Mugleston in particular. The Court's finding is supported by the evidence that several disciplinary citations were issued as a result of the heightened scrutiny from supervisors, including suspensions of Phil Clements on June 13, 2002 and Calvin Cook on October 29, 2002 for sleeping on the job. TR. 1242-43; RX-13. In addition, Ms. Mugleston's belief that she was being singled out by Steve Wallace while he was giving a tour of TOCDF to outside officials is speculative and not supported by the record. Ms. Mugleston was not aware of what was being said, and even if Steve Wallace gestured in her direction, such a gesture is wide open to interpretation.

F. Steve Wallace Reacting Onerously When Asked About a Procedure

Ms. Mugleston testified that Steve Wallace spoke about a procedure during a meeting in the fall of 2002. TR. 150. Ms. Mugleston asked Mr. Wallace at the meeting what PRP the procedure was listed under, so that the workers could personally review the procedure themselves. TR. 150. Ms. Mugleston testified that Mr. Wallace reacted in an onerous way, calling her into his office after the meeting and informing her that he did not appreciate being put on the spot in front of the other employees. TR. 150. According to Ms. Mugleston, Mr. Wallace indicated that Ms. Mugleston should ask him questions about procedure, safety, or environmental issues in his office and not in front of everyone. TR. 150. The Court finds that there is insufficient evidence to establish a casual connection between Steve Wallace's reaction and Ms. Mugleston's protected activities. The Court notes that Ms. Mugleston did not question the safety or environmental elements of the procedure, but instead was asking merely for the identity of the procedure. Mr. Wallace's reaction was related to the fact that Ms. Mugleston put him on the spot in front of other employees. His reaction was independent of the fact that Ms. Mugleston had raised safety and environmental concerns. The evidence does not support a finding that Steve Wallace would have reacted any differently if Ms. Mugleston had not engaged in protected activity. Considering all the statements and actions in this case that constitute evidence of retaliatory motivations by EG&G, the Court finds that Mr. Wallace's onerous reaction under the circumstances occurred for nondiscriminatory reasons.

G. Steve Wallace Reacting Angrily After XRF Room Incident

In late 2001 or early 2002, an incident occurred involving a planned entry into the XRF room, an x-ray room where mercury ton containers are sampled and x-rayed. TR. 157, 681, 1617-18. Ms. Mugleston and Mr. Utley were door guarding for the entry at the time. TR. 682. According to Ms. Mugleston and Mr. Utley, the entrants were uncomfortable with performing the entry because they were not properly prepared. TR. 157, 682-84. Ms. Mugleston and Mr. Utley informed Steve Wallace about the situation, and Mr. Wallace came to the XRF room. TR. 157, 684-85. An argument ensued between Mr. Wallace and Ms. Mugleston and Mr. Utley. TR. 157-58, 686, 1617-20. According to Ms. Mugleston, Mr. Wallace became furious with her, began yelling at her, and told her that the entrants did not need counseling or clarification about the entry, but instead needed to just go in and do their job. TR. 157-58. Mr. Wallace indicated that an informal meeting with safety representatives had been held, and Mr. Wallace disagreed with Ms. Mugleston and Mr. Utley that there was a lack of preparation for the entry. TR. 1617. In the end, Mr. Wallace postponed the entry because Ms. Mugleston raised enough of an issue in his mind that he felt the entry should be delayed until more information could be gathered. TR. 158, 686-87, 1621. Mr. Wallace testified that he was frustrated with the incident. TR. 1622. Mr. Wallace explained that this frustration did not lie with

Ms. Mugleston, but instead with the fact that all the preparation and resources put into the entry became wasted. TR. 1622.

The Court finds that while there is some connection between Steve Wallace's angry reaction and Ms. Mugleston's safety and environmental concerns about the XRF Room, Mr. Wallace's conduct did not have the character of intentional harassment or ridicule of Ms. Mugleston. Instead, Mr. Wallace reacted angrily because of reasons not related personally to Ms. Mugleston, namely company operations and resources. The incident was also specific to entry procedures for the XRF Room, and did not amount to an enduring interference with Ms. Mugleston's job duties. The Court finds that after considering this incident in aggregate with all the other evidence in this case suggesting discrimination, Ms. Mugleston has not demonstrated that she was subject to severe and pervasive harassment at EG&G such that a hostile work environment existed.

H. Scott Vonhatten Reacting Angrily After Barricade Tape Incident

Ms. Mugleston asserted that she was treated unfairly during an incident in August 2002 involving barricade tape. TR. 106, 167. At the time of the incident, Ms. Mugleston and Jeff Utley were loading brine into tankers. TR. 107, 691-92. They had corded off their work area with caution tape in compliance with procedures. TR. 107, 691-92. Thereafter, laborers from the Maintenance Department intentionally drove through the barricade tape as a joke. TR. 107, 691-92. Scott Vonhatten was informed that the barricade tape was down, and Mr. Vonhatten sent a messenger, Gary Boswell, to inform Ms. Mugleston and Mr. Utley to put the tape back up. TR. 1985-86, 1693-94. Mr. Vonhatten testified that he sent Mr. Boswell because Mr. Boswell was already on his way out. TR. 1694-95. It is unclear whether Ms. Mugleston and Mr. Utley were aware, prior to being notified by Mr. Boswell, that the tape had been broken and whether they were looking for more barricade tape to put back up.³² After they encountered Mr. Boswell, Ms. Mugleston and Mr. Utley put the tape back up. TR. 107-08, 1965-66.

According to Mr. Vonhatten, Mr. Boswell had reported back to him that Mr. Utley and Ms. Mugleston refused to put the tape back up and that Mr. Boswell himself had to replace the tape. TR. 1686, 1690. Ms. Mugleston and Mr. Utley contend that they did not refuse at any time to replace the tape. TR. 1965-66, 2009. After finishing with the brine, Ms. Mugleston and Mr. Utley were confronted by Mr. Vonhatten. TR. 108, 692-93, 1686. A heated discussion ensued. TR. 108, 692-93, 1687. According to Ms. Mugleston and Mr. Utley, Mr. Vonhatten was yelling at them and using foul language, stating that they had failed to follow procedures by not replacing the barricade

³² Ms. Mugleston testified that she and Mr. Utley were looking for more tape to put back up when they encountered Gary Boswell. TR. 107-08. Mr. Utley's testimony on the other hand indicates that he and Ms. Mugleston became aware that the tape was down through Gary Boswell. TR. 692, 1965.

tape. TR. 108, 692-93. Ms. Mugleston testified that Mr. Vonhatten did not let her explain what happened, but instead just talked down to her. TR. 108.

According to Mr. Vonhatten, he asked why Ms. Mugleston and Mr. Utley were not following barricade tape procedures and why they had not called him to report a problem at the site, in violation of another procedure. TR. 1687. Mr. Vonhatten testified that the argument escalated after Mr. Utley and Ms. Mugleston provided explanations he did not agree with. TR. 1692. Mr. Vonhatten used vulgar language during the argument, and Mr. Vonhatten believed that Mr. Utley and Ms. Mugleston both also used vulgar language, although it was difficult to be sure because everyone was speaking at the same time. TR. 1687-90. The episode ended when Mr. Vonhatten ultimately came to understand that the barricade tape was snapped intentionally by laborers. TR. 108-09, 1692. Mr. Vonhatten testified that he thereafter contacted the Maintenance Manager who verified that a maintenance worker drove through the barricade tape. TR. 1693. The barricade tape dispute did not arise again after that day. TR. 1687-88. Ms. Mugleston was not disciplined for the incident. TR. 109.

After considering the incident, the Court finds that Scott Vonhatten's hostile reaction to Ms. Mugleston during the barricade tape incident was not related to her engagement in protected activities. The incident arose in connection to the procedures regarding barricade tape and was not related to Ms. Mugleston's safety or environmental concerns. There is no evidence that Mr. Vonhatten would have reacted any less angrily under the same circumstances with a worker who had not raised safety and environmental concerns. Considering all the evidence in this case of retaliatory motive by EG&G, the Court finds that Ms. Mugleston has failed to establish that Mr. Vonhatten intentionally harassed her in relation to the barricade tape incident because of her protected activities.

I. Ethics training

Ethics training regarding workplace retaliation was conducted by EG&G in July 2002, as a result of Ms. Mugleston's March 2002 complaint with the Department of Labor. TR. 143-44, 166, 1163. Ms. Mugleston and several other witnesses opined that the ethics training alluded to Ms. Mugleston's own whistleblowing activities. TR. 145, 593-94, 741-42, 829. These witnesses opined that the training was used by EG&G as a vehicle to discourage the raising of safety and environmental concerns and to determine which employees would side with the company and which would side against the company in the event of whistleblowing. TR. 145, 593-94, 741-42, 829.

Debbie Sweeting and Lois Baar explained that the ethics training was conducted to ensure that employees understood that raising safety and environmental concerns was a legitimate thing to do and that EG&G encouraged such activity, that employees knew their rights in such situations and what channels were available to them, and that employees were aware they needed to be respectful when safety and environmental issues

are raised or a formal complaint is filed. TR. 1159, 1163-64, 1252-53. The training sessions were conducted by EG&G attorneys Lois Baar and Jathan Janove. TR. 1156-57. Ms. Baar testified that she performs employment law training on a regular basis, covering such topics as sexual harassment training, performance appraisals, survey training for managers, and the Americans with Disabilities Act. TR. 1157.

Ms. Baar testified that interactive exercises were used in the training sessions. TR. 1162. Ms. Baar explained that she and her partner presented trainees in each session with a hypothetical. TR. 1162. The trainees were then divided into two groups and were directed to discuss the hypothetical and formulate an opinion. TR. 1162. Ms. Baar testified that the trainees were not being asked in the training session to take sides with management or employees. TR. 1164. Ms. Baar testified that although it was not the intent, the interactive exercises may have given employees the impression that EG&G was asking for their opinion about which party in each scenario was doing the proper thing. TR. 1164.

The Court accepts Ms. Baar's testimony. Although some employees had the impression that EG&G was using the ethics training to discourage whistleblowing, the Court finds that the ethics training was intended to communicate the dynamics of retaliation and to prevent the harassment of Ms. Mugleston in connection with her protected activities. After considering the evidence, including whether or not the ethics training was merely pretext for intentional harassment of Ms. Mugleston, the Court finds that the ethics training was not intended to be antagonistic towards Ms. Mugleston or to discourage whistleblowing. The training in fact had the opposite intent. Based on the foregoing, the Court finds that the ethics training, taken in consideration with all the other evidence in this case suggesting discrimination, did not contribute to creating a hostile work environment in satisfaction of Ms. Mugleston's claim.

J. Reclassification of the BRA RHA Position Under the Service Contract Act

Ms. Mugleston raised a concern in her October 2001 and February 2002 memos about the possible reclassification of the BRA RHA operator position under the Service Contract Act. TR. 237-38, 283-84, 1213; RX-1; RX-37. Ms. Mugleston was concerned that the BRA RHA position would be underrated for compensation purposes in terms of its classification. TR. 233-34, 241. The Court finds that there is no evidence indicating that the BRA RHA reclassification issue was related to Ms. Mugleston's protected activity. In addition, there have been no changes to the classification of BRA RHA operators as of yet. TR. 239, 1217, 1270. Therefore, the Court finds that the BRA RHA reclassification issue did not contribute to creating a hostile work environment in relation to Ms. Mugleston.

K. Negative Comments and Sentiments Regarding Ms. Mugleston

Based on the testimony of Andy Harris and Larry Allen, the Court finds that Steve Wallace during a management meeting in early 2003 made a comment to the effect that TOCDF would have fewer struggles in how it does business if it were not for Ms. Mugleston's safety and environmental concerns. TR. 825, 868-69. Steve Wallace also made a comment referring to Ms. Mugleston as a movie star or celebrity after Ms. Mugleston's media appearance in Utah or Alabama. TR. 117, 745-46, 1624-25, 2009. Mr. Wallace testified that he was surprised after seeing Ms. Mugleston in the media and made the comment, "Gosh, we have a celebrity." TR. 1624. Mr. Wallace testified that he did not intend the comment to be derogatory and that he was actually surprised and impressed with Ms. Mugleston's appearance in the media. TR. 1624. Mr. Wallace testified that there was a good deal of chatter at TOCDF about Ms. Mugleston's media appearance, as many people were curious about it. TR. 1628. Mr. Wallace characterized the chatter as inquisitive rather than mean-spirited. TR. 1628. Mr. Wallace also testified that he spoke to Ms. Mugleston about her intentions at TOCDF after rumors began that Ms. Mugleston had started a petition in the Tooele area to shut down TOCDF. TR. 117, 1649-50, 2007-09.

In addition, evidence was submitted that John Cafe has made negative remarks about Ms. Mugleston and has made Ms. Mugleston stand and wait to receive her keys for keyholding. TR. 133-34, 715-17. Evidence was also submitted that Jerry Safrans and Sid Lawrence made remarks about Ms. Mugleston over the plant radio system. TR. 129-32, 776. There was also evidence of comments about Ms. Mugleston on bathroom walls. TR. 625-26, 728. Pat Vario testified that Darren Hendrix made a negative remark about Ms. Mugleston. TR. 657-58. There were also rumors at TOCDF about Ms. Mugleston and Mr. Utley, as well as comments in Tooele area newspapers by Marty Ahlstrom and Tom Duffield. TR. 117-18, 313-15, 323-24, 732, 1232-33. Based on testimony from Ms. Mugleston, David Palmer, Steve Land, Dennis Cook, Bobbie Earp, Pat Vario, and Steve Wallace, other negative comments were reportedly made by Larry Allen, Darryl Drewery, Lynn Carlson, Herman Candelaria, Scott Vonhatten, Ray Bell, Sarah Muir, Sue Renzello, Erv Hillman, Mike Green, Steve Land, and Brett Pfeiffer. TR. 104, 340-41, 621-22, 776-79, 838-39, 877-79, 1626-29.

Although there is some general evidence that remarks about Ms. Mugleston were made at various times, the Court finds that such evidence is not sufficient to establish that a hostile work environment existed in relation to Ms. Mugleston such that the workplace for Ms. Mugleston was an abusive environment or was pervaded with hostility. First, much of the evidence regarding the comments and activity directed toward Ms. Mugleston is vague and patchy. For example, Steve Land's description of comments about Ms. Mugleston by Ray Bell, Sarah Muir, and others in the control room was only: "Some angry. Some worried that they'll have a job." TR. 621-22. David Palmer

described negative activity against Ms. Mugleston by Darryl Drewery, Lynn Carlson, and Herman Candelaria only as: “They was [*sic*] kind of ganging up against Brenda and mad about her and what she was doing with—with all the environmental and safety issues she was bringing up.” TR. 341. Dennis Cook characterized statements he has heard from PAS and BRA RHA operators as: “Just some co-workers mentioning, you know, about making comments about trouble, causing trouble, morale, things like that.” TR. 877. Bobbie Earp’s testimony about Sue Renzello’s comment regarding Ms. Mugleston consisted only of, “She’s just very upset and very, very concerned and she feels like the only thing Brenda’s trying to do is shut the job down. And we all need our jobs.” TR. 778. Andy Harris’ best recollection of “snide” comments about Ms. Mugleston that would arise during daily management meetings about once a month was: “Brenda’s causing us a lot of trouble.” TR. 825-28. Larry Allen testified that he heard Steve Wallace make remarks about Ms. Mugleston to Steve Lowry during daily shift meetings leading up to the Olympics relating to, “concerns that it was all about shutting the plant down, the whistleblower comment, that type of stuff.” TR. 867. Because such evidence is vague, the meaning, severity, and intent of the remarks are difficult to decipher. Without more, the Court cannot give much weight to such evidence in evaluating Ms. Mugleston’s hostile work environment claim.

The Court finds that the remaining comments in aggregate were sporadic and consistent with tensions that by and large occur at many workplaces. The Court finds that these comments, together with the other evidence of hostility in the workplace towards Ms. Mugleston, are not so severe and pervasive to cause a reasonable person distress. Furthermore, after considering all the events of alleged discriminatory action in this case in aggregate, the Court finds that Ms. Mugleston’s work environment was not pervaded with hostility such that an abusive work environment was created and a reasonable person would have been detrimentally affected by the workplace.

L. PDI and Denial of Merit Raise

The Court also finds that EG&G’s submission of PDI regarding Ms. Mugleston was not a degrading or humiliating event, so as to contribute to the merits of her hostile work environment claim. EG&G’s submission of PDI merely fulfills its obligation of disclosure for the Army CPRP. While PDI submitted by EG&G on Ms. Mugleston did reference her settlement, safety and environmental memorandums, and DOL complaint, EG&G’s role as a sender of PDI is to transmit information even if there is uncertainty about whether the information is PDI. TR. 1096-97, 1126. The Army Certifying Official screens the information and the information is shredded if it is not relevant. TR. 1096-97, 1112. Robert Rothenberg, the Army Certifying Official for Ms. Mugleston, testified that nothing has been sent in as PDI regarding Ms. Mugleston that has been inappropriate. TR. 1105-06. The Court agrees. While some PDI did reference activity that was protected under the RCRA and CERCLA, there is no evidence indicating that

that such PDI would not be sent about someone else in similar circumstances or that Ms. Mugleston was treated any differently than someone else in similar circumstances.

The Court also finds that EG&G did not act improperly by not awarding Ms. Mugleston a merit raise upon her rehiring as a BRA RHA operator in October 1999. EG&G likewise did not act improperly by not awarding a retroactive merit increase to Ms. Mugleston's based on her October 2001 request. EG&G employees may receive merit increases on October 1st of any year. TR. 550. Based on EG&G's agreement with the United States government, no employee is allowed to receive a raise within six months of the October 1st raise. TR. 551. Therefore, employees who receive a raise between April 1st and October 1st are not eligible for the merit increase in October. TR. 551. However, EG&G allows an exception for employees hired between April and October; these employees are eligible to receive a prorated merit increase six months after their hiring date. TR. 551.

In deciding to reject Ms. Mugleston's request for a retroactive merit raise, Debbie Sweeting reviewed EG&G's handling of the other workers laid off at the same time as Ms. Mugleston. TR. 552, 1216. Twelve to fifteen other workers were rehired like Ms. Mugleston, and none of these workers were eligible for a merit increase until the following year. TR. 552, 1216. Therefore, the original denial of Ms. Mugleston's merit raise was consistent with the policy applied by EG&G to all the other workers rehired under the same circumstances as Ms. Mugleston. In addition, the rejection of Ms. Mugleston's October 2001 request for a retroactive merit increase upheld and preserved EG&G's policy toward those workers. TR. 552, 1216. The Court finds that Ms. Mugleston's request was thoroughly investigated and that the reasons for denying her request were reasonable and legitimate.

Although Ms. Mugleston cited Scott Monsen's receipt of a retroactive merit raise as evidence of disparate treatment, the Court finds that the circumstances surrounding Scott Monsen's merit raise are distinguishable from Ms. Mugleston's situation. First, Scott Monsen was hired at a different time as Ms. Mugleston. Scott Monsen was hired some time in 2001 while Ms. Mugleston was rehired in 1999. TR. 257-58, 442-43, 637; RX-33. EG&G could legitimately have used different pay strategies in different years. Second, Scott Monsen was a new hiring while Ms. Mugleston was being rehired after her lay off. Upon her rehiring, Ms. Mugleston retained the same wage that she was earning when she was laid off, which was already consistent with the high end of the range for the salary of a BRA RHA operator. TR. 1216. Based on EG&G's retention of Ms. Mugleston's former wage, the Court finds EG&G had a distinctive pay strategy for Ms. Mugleston's rehiring that made her rehiring different from the circumstances surrounding Scott Monsen. In addition, there was no impropriety surrounding Mr. Monsen's raises. Debbie Sweeting testified that the raises granted to Scott Monsen were granted at times that are allowed within EG&G's compensation management plan. TR. 550.

CONCLUSION AND RECOMMENDED ORDER

Ms. Mugleston proved that she engaged in protected activity under the RCRA and CERCLA. Ms. Mugleston also proved that adverse employment actions were taken against her. However, EG&G produced evidence that its adverse employment actions against Ms. Mugleston were motivated by legitimate, nondiscriminatory reasons. Ms. Mugleston has failed to prove that EG&G's proffered reasons were not the true reasons for the adverse employment actions. In addition, there is some evidence of workplace comments and negative activity directed toward Ms. Mugleston due to her protected activities. However, Ms. Mugleston has failed to show that such harassment was sufficiently severe or pervasive so as to alter the conditions of her employment and create an abusive work environment, which would have detrimentally affected a reasonable person. As such, Ms. Mugleston is not entitled to any remedy for her retaliation and hostile work environment claims.

Accordingly, the Court recommends that Complainant's claim be **DISMISSED**.

So ORDERED.

A

RICHARD D. MILLS

Administrative Law Judge

NOTICE: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. *See* 29 C.F.R. §§ 24.7(d) and 24.8.